OHIO RULES OF CRIMINAL PROCEDURE

RULES

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RULE 1. Scope of Rules: Applicability; Construction; Exceptions.

(A) Applicability. These rules prescribe the procedure to be followed in all courts of this state in the exercise of criminal jurisdiction, with the exceptions stated in division (C) of this rule.

(B) Purpose and construction. These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed and applied to secure the fair, impartial, speedy, and sure administration of justice, simplicity in procedure, and the elimination of unjustifiable expense and delay.

(C) Exceptions. These rules, to the extent that specific procedure is provided by other rules of the Supreme Court or to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure (1) upon appeal to review any judgment, order or ruling, (2) upon extradition and rendition of fugitives, (3) in cases covered by the Uniform Traffic Rules, (4) upon the application and enforcement of peace bonds, (5) in juvenile proceedings against a child as defined in Rule 2(D) of the Rules of Juvenile Procedure, (6) upon forfeiture of property for violation of a statute of this state, or (7) upon the collection of fines and penalties. Where any statute or rule provides for procedure by a general or specific reference to the statutes governing procedure in criminal actions, the procedure shall be in accordance with these rules.

[Effective: July 1, 1973; amended effective July 1, 1975; July 1, 1996.]

RULE 2. Definitions.

As used in these rules:

(A) "Felony" means an offense defined by law as a felony.

(B) "Misdemeanor" means an offense defined by law as a misdemeanor.

(C) "Serious offense" means any felony, and any misdemeanor for which the penalty prescribed by law includes confinement for more than six months.

(D) "Petty offense" means a misdemeanor other than a serious offense.

(E) "Judge" means judge of the court of common pleas, juvenile court, municipal court, or county court, or the mayor or mayor's court magistrate of a municipal corporation having a mayor's court.

(F) "Magistrate" means any person appointed by a court pursuant to Crim. R. 19. "Magistrate" does not include an official included within the definition of magistrate contained in section 2931.01 of the Revised Code, or a mayor's court magistrate appointed pursuant to section 1905.05 of the Revised Code.

(G) "Prosecuting attorney" means the attorney general of this state, the prosecuting attorney of a county, the law director, city solicitor, or other officer who prosecutes a criminal case on behalf of the state or a city, village, township, or other political subdivision, and the assistant or assistants of any of them. As used in Crim. R. 6, "prosecuting attorney" means the attorney general of this state, the prosecuting attorney of a county, and the assistant or assistants of either of them.

(H) "State" means this state, a county, city, village, township, other political subdivision, or any other entity of this state that may prosecute a criminal action.

(I) "Clerk of court" means the duly elected or appointed clerk of any court of record, or the deputy clerk, and the mayor or mayor's court magistrate of a municipal corporation having a mayor's court.

(J) "Law enforcement officer" means a sheriff, deputy sheriff, constable, municipal police officer, marshal, deputy marshal, or state highway patrolman, and also means any officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, the authority to arrest violators is conferred, when the officer, agent, or employee is acting within the limits of statutory authority. The definition of "law enforcement officer" contained in this rule shall not be construed to limit, modify, or expand any statutory definition, to the extent the statutory definition applies to matters not covered by the Rules of Criminal Procedure.

[Effective: July 1, 1973; amended effective July 1, 1976; July 1, 1990.]

RULE 3. Complaint.

(A) The complaint is a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths.

(B) In addition, a traffic ticket that complies with Traf.R. 2 shall constitute a complaint for an alleged violation of a law, ordinance, or regulation governing the operation and use of vehicles, conduct of pedestrians in relation to vehicles, or weight, dimension, loads or equipment, or vehicles drawn or moved on highways and bridges, except for alleged violations of Title 29 of the Revised Code.

[Effective: July 1, 1973; amended effective July 1, 2022.]

RULE 4. Warrant or Summons; Arrest.

(A) Issuance.

(1) Upon complaint. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, magistrate, clerk of court, or officer of the court designated by the judge, to any law enforcement officer authorized by law to execute or serve it.

The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the issuing authority may require the complainant to appear personally and may examine under oath the complainant and any witnesses. The testimony shall be admissible at a hearing on a motion to suppress, if it was taken down by a court reporter or recording equipment.

The issuing authority shall issue a summons instead of a warrant upon the request of the prosecuting attorney, or when issuance of a summons appears reasonably calculated to ensure the defendant's appearance.

(2) By law enforcement officer with warrant. In misdemeanor cases where a warrant has been issued to a law enforcement officer, the officer, unless the issuing authority includes a prohibition against it in the warrant, may issue a summons in lieu of executing the warrant by arrest, when issuance of a summons appears reasonably calculated to ensure the defendant's appearance. The officer issuing the summons shall note on the warrant and the return that the warrant was executed by issuing summons, and shall also note the time and place the defendant shall appear. No alias warrant shall be issued unless the defendant fails to appear in response to the summons, or unless subsequent to the issuance of summons it appears improbable that the defendant will appear in response to the summons.

(3) By law enforcement officer without a warrant. In misdemeanor cases where a law enforcement officer is empowered to arrest without a warrant, the officer may issue a summons in lieu of making an arrest, when issuance of a summons appears reasonably calculated to ensure the defendant's appearance. The officer issuing the summons shall file, or cause to be filed, a complaint describing the offense. No warrant shall be issued unless the defendant fails to appear in response to the summons, or unless subsequent to the issuance of summons it appears improbable that the defendant will appear in response to the summons.

(B) Multiple issuance; sanction. More than one warrant or summons may issue on the same complaint. If the defendant fails to appear in response to summons, a warrant or alias warrant shall issue.

(C) Warrant and summons: form.

(1) Warrant. The warrant shall contain the name of the defendant or, if that is unknown, any name or description by which the defendant can be identified with reasonable certainty, a description of the offense charged in the complaint, whether the warrant is being issued before the defendant has appeared or was scheduled to appear, and the numerical designation of the applicable statute or ordinance. A copy of the complaint shall be attached to the warrant.

(a) If the warrant is issued after the defendant has made an initial appearance or has failed to appear at an initial appearance, the warrant shall command that the defendant be arrested and either of the following:

(i) That the defendant shall be required to post a sum of cash or secured bail bond with the condition that the defendant appear before the issuing court at a time and date certain;

(ii) That the defendant shall be held without bail until brought before the issuing court without unnecessary delay.

(b) If the warrant is issued before the defendant has appeared or is scheduled to appear, the warrant shall so indicate and the bail provisions of Crim.R. 46 shall apply.

(2) Summons. The summons shall be in the same form as the warrant, except that it shall not command that the defendant be arrested, but shall order the defendant to appear at a stated time and place and inform the defendant that he or she may be arrested if he or she fails to appear at the time and place stated in the summons. A copy of the complaint shall be attached to the summons, except where an officer issues summons in lieu of making an arrest without a warrant, or where an officer issues summons after arrest without a warrant.

(D) Warrant and summons: execution or service; return.

(1) By whom. Warrants shall be executed and summons served by any officer authorized by law. Unless a summons is being issued in lieu of arrest under divisions (A)(2) and (A)(3), a summons may also be served by the clerk.

(2) Territorial limits. Warrants may be executed or summons may be served at any place within this state.

(3) Manner. Except as provided in division (A)(2) of this rule, warrants shall be executed by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of the arrest. In such case, the officer shall inform the defendant of the offense charged and of the fact that the warrant has been issued. A copy of the warrant shall be given to the defendant as soon as possible.

Summons may be served upon a defendant who is an individual by delivering a copy to the defendant personally, or by leaving it at the defendant's usual place of residence with some person of suitable age and discretion then residing therein, or, except when the summons is issued in lieu

of executing a warrant by arrest, by mailing it to the defendant's last known address by United States certified or express mail with a return receipt requested or by commercial carrier service utilizing any form of delivery requiring a signed receipt. When service of summons is made by United States certified mail or express mail it shall be served by the clerk in the manner prescribed by Civ.R. 4.1(A)(1)(a). When service of summons is made by a commercial carrier service, it shall be served in the manner prescribed by Civ. R. 4.1(A)(1)(b). Summons issued under division (A)(2) of this rule in lieu of executing a warrant by arrest shall be served by personal or residence service. Summons issued under division (A)(3) of this rule in lieu of arrest and summons issued after arrest under division (F) of this rule shall be served by personal service only.

A summons to a defendant who is not an individual shall be served in the manner provided for service in Civ.R. 4 through 4.2 and 4.6(A) and (B), except that the waiver provisions of Civ.R. 4(D) shall not apply.

(4) Return. The officer executing a warrant shall make return of the warrant to the issuing court before whom the defendant is brought pursuant to Crim.R. 5. At the request of the prosecuting attorney, any unexecuted warrant shall be returned to the issuing court and canceled by a judge of that court.

When the copy of the summons has been served by delivering a copy to the defendant personally or by leaving it at the defendant's usual place of residence with some person of suitable age and discretion then residing therein, the person serving summons shall endorse that fact on the summons and return it to the clerk, who shall make the appropriate entry on the appearance docket. When the copy of the summons has been served by mailing it to the defendant's last known address by United States certified or express mail or by a commercial carrier service utilizing any form of delivery requiring a signed receipt, it shall be docketed and returned in the manner prescribed by Civ.R. 4.1(A)(2).

When the person attempting to serve summons by delivering a copy to the defendant personally or by leaving it at the defendant's usual place of residence with some person of suitable age and discretion then residing therein is unable to serve a copy of the summons within twenty-eight days of the date of issuance, the person serving summons shall endorse that fact and the reasons for the failure of service on the summons and return the summons and copies to the clerk, who shall make the appropriate entry on the appearance docket. If the return of service of a copy of the summons attempted to be served by United States certified or express mail or by a commercial carrier service utilizing any form of delivery requiring a signed receipt shows failure of delivery, the clerk shall file the return receipt or returned envelope in the records of the case.

At the request of the prosecuting attorney, made while the complaint is pending, a warrant returned unexecuted and not canceled, or a summons returned unserved, or a copy of either, may be delivered by the court to an authorized officer for execution or service.

(E) Arrest.

(1) Arrest upon warrant.

(a) Where a person is arrested upon a warrant that states it was issued before a scheduled initial appearance, or the warrant is silent as to when it was issued, the judicial officer before whom the person is brought shall apply Crim.R. 46.

(b) Where a person is arrested upon a warrant that states it was issued after an initial appearance or the failure to appear at an initial appearance and the arrest occurs either in the county from which the warrant issued or in an adjoining county, the arresting officer shall, except as provided in division (F) of this rule, where the warrant provides for the posting of bail, permit the arrested person to post a sum of cash or secured bail bond as contained in the warrant with the requirement that the arrested person appear before the warrant issuing court at a time and date certain, or bring the arrested person without unnecessary delay before the court that issued the warrant.

(c) Where a person is arrested upon a warrant that states it was issued after an initial appearance or the failure to appear at an initial appearance and the arrest occurs in any county other than the county from which the warrant was issued or in an adjoining county, the following sequence of procedures shall be followed:

(i) Where the warrant provides for the posting of bail, the arrested person shall be permitted to post a sum of cash or secured bail bond as contained in the warrant with the requirement that the arrested person appear before the warrant issuing court at a time and date certain.

(ii) The arrested person may in writing waive the procedures in division (E)(1)(c)(iii) of this rule after having been informed in writing and orally by a law enforcement officer of those procedures, and consenting to being removed to the warrant issuing court without further delay. This waiver shall contain a representation by a law enforcement officer that the waiver was read to the arrested person and that the arrested person signed the waiver in the officer's presence.

(iii) Where the warrant is silent as to the posting of bail, requires that the arrested person be held without bail, the arrested person chooses not to post bail, or the arrested person chooses not to waive the procedures contained in division (E)(1) of this rule, the arrested person shall, except as provided in division (F) of this rule, be brought without unnecessary delay before a court of record therein, having jurisdiction over such an offense, and the arrested person shall not be removed from that county until the arrested person has been given a reasonable opportunity to consult with an attorney, or individual of the arrested person's choice, and to post bail to be determined by the judge or magistrate of that court not inconsistent with the directions of the issuing court as contained in the warrant or after consultation with the issuing court. if the warrant is silent as to the posting of bail or holding the arrested person without bail, the court may permit the arrested person to post bail, hold the arrested person without bail, or consult with the warrant issuing court on the issue of bail.

(d) If the arrested person is not released, the arrested person shall then be removed from the county and brought before the court issuing the warrant, without unnecessary delay. If the arrested person is released, the release shall be on condition that the arrested person appear in the issuing court at a time and date certain.

(2) Arrest without warrant. Where a person is arrested without a warrant the arresting officer shall, except as provided in division (F), bring the arrested person without unnecessary delay before a court having jurisdiction of the offense, and shall file or cause to be filed a complaint describing the offense for which the person was arrested. Thereafter the court shall proceed in accordance with Crim. R.5.

(F) Release after arrest. Except when otherwise prohibited by law, in misdemeanor cases where a person has been arrested with or without a warrant, the arresting officer, the officer in charge of the detention facility to which the person is brought or the superior of either officer, without unnecessary delay, may release the arrested person by issuing a summons unless it appears that issuance of a summons will not reasonably assure the person's appearance. The officer issuing such summons shall note on the summons the time and place the person must appear and, if the person was arrested without a warrant, shall file or cause to be filed a complaint describing the offense. No warrant or alias warrant shall be issued unless the person fails to appear in response to the summons.

(G) Use of Electronically Produced Criminal Complaint and Summons.

(1) Local rules adopted by a court pursuant to the Rules of Superintendence for the Courts of Ohio may provide for the use of a criminal complaint and summons that is produced by computer or other electronic means. A criminal complaint and summons produced by computer or other electronic means shall conform in all substantive respects to the "Ohio Rules of Criminal Procedure" set forth in the Appendix of Forms. The complaint and summons paper shall be of sufficient quality to allow the court record copy to remain unchanged for the period of the retention schedule for the various criminal offenses as prescribed by Rule 26.05 of the Rules of Superintendence for the Courts of Ohio. The court record for the complaint and summons shall be filed with the court or may be filed electronically as authorized by local rule and division (G)(2) of this rule.

(2) Local rules adopted by a court pursuant to the Rules of Superintendence for the Courts of Ohio may also provide for the filing of the criminal complaint and summons by electronic means. If a criminal complaint and summons is issued at the scene of an alleged offense, the local rule shall require that the issuing officer serve the defendant with the defendant's paper copy of the criminal complaint and summons as required by division (D) of this rule. A law enforcement officer who files a criminal complaint and summons pursuant to divisions (G)(l) or (G)(2) of this rule and electronically affixes the officer's signature thereto, shall also have his/her signature attested to by either a "peace officer," "judge," "clerk," or "deputy clerk" after which the complaint and summons shall be considered to have been certified and shall have the same rights, responsibilities, and liabilities as with all other criminal complaints and summons issued pursuant to these rules.

[Effective: July 1, 1973; amended effective July 1, 1975; July 1, 1990; July 1, 1998; July 1, 2018; July 1, 2019; July 1, 2022.]

RULE 4.1. Optional Procedure in Minor Misdemeanor Cases.

(A) Procedure in minor misdemeanor cases. Notwithstanding Rule 3, Rule 5(A), Rule 10, Rule 11(A), Rule 11(E), Rule 22, Rule 43(A), and Rule 44, a court may establish the following procedure for all or particular minor misdemeanors other than offenses covered by the Uniform Traffic Rules.

(B) Definition of minor misdemeanor. A minor misdemeanor is an offense for which the potential penalty does not exceed a fine of one hundred fifty dollars. With respect to offenses committed prior to January 1, 2004, a minor misdemeanor is an offense for which the potential penalty does not exceed a fine of one hundred dollars.

(C) Form of citation. In minor misdemeanor cases a law enforcement officer may issue a citation. The citation shall: contain the name and address of the defendant; describe the offense charged; give the numerical designation of the applicable statute or ordinance; state the name of the law enforcement officer who issued the citation; and order the defendant to appear at a stated time and place.

The citation shall inform the defendant that, in lieu of appearing at the time and place stated, he may, within that stated time, appear personally at the office of the clerk of court and upon signing a plea of guilty and a waiver of trial pay a stated fine and stated costs, if any. The citation shall inform the defendant that, in lieu of appearing at the time and place stated, he may, within a stated time, sign the guilty plea and waiver of trial provision of the citation, and mail the citation and a check or money order for the total amount of the fine and costs to the violations bureau. The citation shall inform the defendant that he may be arrested if he fails to appear either at the clerk's office or at the time and place stated in the citation.

(D) Duty of law enforcement officer. A law enforcement officer who issues a citation shall complete and sign the citation form, serve a copy of the completed form upon the defendant and, without unnecessary delay, swear to and file the original with the court.

(E) Fine schedule. The court shall establish a fine schedule which shall list the fine for each minor misdemeanor, and state the court costs. The fine schedule shall be prominently posted in the place where violation fines are paid.

(F) Procedure upon failure to appear. When a defendant fails to appear, the court may issue a supplemental citation, or a summons or warrant under Rule 4. Supplemental citations shall be in the form prescribed by division (C) of this rule, but shall be issued and signed by the clerk and served in the same manner as a summons under Rule 4.

(G) Procedure where defendant does not enter a waiver. Where a defendant appears but does not sign a guilty plea and waiver of trial, the court shall proceed in accordance with Rule 5.

[Effective: July 1, 1973; amended effective July 1, 1978; July 1, 2004.]

Staff Note (July 1, 2004 Amendment)

Rule 4.1(B) Definition of minor misdemeanor.

Effective January 1, 2004, R.C.2901.02(G) changed the maximum penalty for a minor misdemeanor from $100 to $150. Crim. R. 4.1(B) was modified to reflect the change in the maximum penalty for a minor misdemeanor.

RULE 5. Initial Appearance, Preliminary Hearing.

(A) Procedure upon initial appearance. When a defendant first appears before a judge or magistrate, the judge or magistrate shall permit the accused or the accused's counsel to read the complaint or a copy thereof, and shall inform the defendant:

(1) Of the nature of the charge against the defendant;

(2) That the defendant has a right to counsel and the right to a reasonable continuance in the proceedings to secure counsel, and, pursuant to Crim.R. 44, the right to have counsel assigned without cost if the defendant is unable to employ counsel;

(3) That the defendant need make no statement and any statement made may be used against the defendant;

(4) Of the right to a preliminary hearing in a felony case, when the defendant's initial appearance is not pursuant to indictment;

(5) Of the right, where appropriate, to jury trial and the necessity to make demand therefor in petty offense cases.

In addition, if the defendant has not been admitted to bail for a bailable offense, the judge or magistrate shall admit the defendant to bail as provided in these rules.

In felony cases the defendant shall not be called upon to plead either at the initial appearance or at a preliminary hearing.

In misdemeanor cases the defendant may be called upon to plead at the initial appearance. Where the defendant enters a plea the procedure established by Crim.R. 10 and Crim.R. 11 applies.

(B) Preliminary hearing in felony cases; procedure.

(1) In felony cases a defendant is entitled to a preliminary hearing unless waived in writing. If the defendant waives preliminary hearing, the judge or magistrate shall forthwith order the defendant bound over to the court of common pleas. Except upon good cause shown, any misdemeanor, other than a minor misdemeanor, arising from the same act or transaction involving a felony shall be bound over or transferred with the felony case. If the defendant does not waive the preliminary hearing, the judge or magistrate shall schedule a preliminary hearing within a reasonable time, but in any event no later than ten consecutive days following arrest or service of summons if the defendant is in custody and not later than fifteen consecutive days following arrest or service of summons if the defendant is not in custody. The preliminary hearing shall not be held, however, if the defendant is indicted. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this division may be extended. In the absence of such consent by the defendant, time limits may be extended only as required by law, or upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

(2) At the preliminary hearing the prosecuting attorney may state orally the case for the state, and shall then proceed to examine witnesses and introduce exhibits for the state. The defendant and the judge or magistrate have full right of cross-examination, and the defendant has the right of inspection of exhibits prior to their introduction. The hearing shall be conducted under the rules of evidence prevailing in criminal trials generally.

(3) At the conclusion of the presentation of the state's case, defendant may move for discharge for failure of proof, and may offer evidence on the defendant's own behalf. If the defendant is not represented by counsel, the court shall advise the defendant, prior to the offering of evidence on behalf of the defendant:

(a) That any such evidence, if unfavorable to the defendant in any particular, may be used against the defendant at later trial.

(b) That the defendant may make a statement, not under oath, regarding the charge, for the purpose of explaining the facts in evidence.

(c) That the defendant may refuse to make any statement, and such refusal may not be used against the defendant at trial.

(d) That any statement the defendant makes may be used against the defendant at trial.

(4) Upon conclusion of all the evidence and the statement, if any, of the accused, the court shall do one of the following:

(a) Find that there is probable cause to believe the crime alleged or another felony has been committed and that the defendant committed it, and bind the defendant over to the court of common pleas of the county or any other county in which venue appears.

(b) Find that there is probable cause to believe that a misdemeanor was committed and that the defendant committed it, and retain the case for trial or order the defendant to appear for trial before an appropriate court.

(c) Order the accused discharged.

(d) Except upon good cause shown, any misdemeanor, other than a minor misdemeanor, arising from the same act or transaction involving a felony shall be bound over or transferred with the felony case.

(5) Any finding requiring the accused to stand trial on any charge shall be based solely on the presence of substantial credible evidence thereof. No appeal shall lie from such decision and the discharge of defendant shall not be a bar to further prosecution.

(6) In any case in which the defendant is ordered to appear for trial for any offense other than the one charged the court shall cause a complaint charging such offense to be filed.

(7) Upon the conclusion of the hearing and finding, the court or the clerk of such court, shall, within seven days, complete all notations of appearance, motions, pleas, and findings on the criminal docket of the court, and shall transmit a record of the appearance docket entries, together with a copy of the original complaint and affidavits, if any, filed with the complaint, the journal or docket entry of reason for changes in the charge, if any, together with the order setting bail and the bail including any bail deposit, if any, filed, to the clerk of the court in which defendant is to appear. Such record shall contain an itemized account of the costs accrued.

(8) A municipal or county court retains jurisdiction on a felony case following the preliminary hearing, or a waiver thereof, until such time as a transcript of the appearance, docket entries, and other matters required for transmittal are filed with the clerk of the court in which the defendant is to appear.

[Effective: July 1, 1973; amended effective July 1, 1975; July 1, 1976; July 1, 1982; July 1, 1990; July 1, 2012; July 1, 2014; July 1, 2017.]

Staff Note (July 1, 2017 Amendments)

Crim. R. 5(B)(7)

The term "record" has been substituted for the previous term "transcript" in describing the compilation of appearance docket entries that the court or clerk of courts shall transmit in connection with a felony bindover. This is not a substantive change. The previous term "transcript" was potentially confusing because it was not being used in the common parlance of a verbatim written record of the words actually spoken in court.

RULE 6. The Grand Jury.

(A) Summoning grand juries. The judge of the court of common pleas for each county, or the administrative judge of the general division in a multi-judge court of common pleas or a judge designated by the administrative judge, shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of nine members, including the foreperson, and a number of alternates as provided in division (H) of this rule.

(B) Objections to grand jury and to grand jurors.

(1) Challenges. The prosecuting attorney, or the attorney for a defendant who has been held to answer in the court of common pleas, may challenge the array of grand jurors or an individual grand juror on the ground that the grand jury or individual grand juror was not selected, drawn, or summoned in accordance with the statutes of this state. Challenges shall be made before the administration of the oath to the grand jurors and shall be tried by the court.

(2) Motion to dismiss. A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified, if it appears from the record kept pursuant to subdivision (C) that seven or more grand jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(C) Foreperson and deputy foreperson. The court may appoint any qualified elector or one of the grand jurors to be foreperson and one of the grand jurors to be deputy foreperson. The foreperson shall be a member of the grand jury for all purposes, including voting. The foreperson shall have power to administer oaths and affirmations and shall sign all indictments. The foreperson or another grand juror designated by the foreperson shall keep a record of the number of grand jurors concurring in the finding of every indictment and shall upon the return of the indictment file the record of concurrence with the clerk of court. During the absence or disqualification of the foreperson, the deputy foreperson shall act as foreperson.

(D) Who may be present. The prosecuting attorney, the witness under examination, interpreters when needed and, a court reporter or other person designated by the court for the purpose of taking the evidence and preparing a record of the proceedings may be present while the grand jury is in session, but no person other than the grand jurors and an interpreter for a grand juror pursuant to Sup.R. 88 may be present while the grand jury is deliberating or voting.

(E) Secrecy of proceedings and disclosure. Deliberations of the grand jury and the vote of any grand juror shall not be disclosed. Disclosure of other matters occurring before the grand jury may be made to the prosecuting attorney for use in the performance of his duties only pursuant to this rule. A grand juror, prosecuting attorney, interpreter, court reporter, or typist who transcribes recorded testimony, may disclose other matters occurring before the grand jury, only when so directed by the court preliminary to or in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a

motion to dismiss the indictment because of matters occurring before the grand jury. No grand juror, officer of the court, or other person shall disclose that an indictment has been found against a person before such indictment is filed and the case docketed. The court may direct that an indictment shall be kept secret until the defendant is in custody or has been released pursuant to Rule 46. In that event the clerk shall seal the indictment, the indictment shall not be docketed by name until after the apprehension of the accused, and no person shall disclose the finding of the indictment except when necessary for the issuance of a warrant or summons. No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(F) Finding and return of indictment. An indictment may be found only upon the concurrence of seven or more grand jurors. When so found the foreperson or deputy foreperson shall sign the indictment as foreperson or deputy foreperson. The indictment shall be returned by the foreperson or deputy foreperson to a judge of the court of common pleas and filed with the clerk who shall endorse thereon the date of filing and enter each case upon the appearance and trial dockets. If the defendant is in custody or has been released pursuant to Crim.R. 46 and seven grand jurors do not concur in finding an indictment, the foreperson shall so report to the court forthwith.

(G) Discharge and excuse. A grand jury shall serve until discharged by the court. A grand jury may serve for four months, but the court upon a showing of good cause by the prosecuting attorney may order a grand jury to serve more than four months but not more than nine months. The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court. At any time for cause shown the court may excuse a grand juror either temporarily or permanently, and in the latter event the court may impanel another eligible person in place of the grand juror excused.

(H) Alternate grand jurors. The court may order that grand jurors, in addition to the regular grand jury, be called, impaneled and sit as alternate grand jurors. Unless provided otherwise by local court rule, the number of alternate grand jurors shall not exceed five. Alternate grand jurors, in the order in which they are called, shall replace grand jurors who, prior to the time the grand jury votes on an indictment, are found to be unable or disqualified to perform their duties. Alternate grand jurors shall be drawn in the same manner, shall have the same qualifications, shall be subjected to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the regular grand jurors. Alternate grand jurors may sit with the regular grand jury, but shall not be present when the grand jury deliberates and votes.

[Effective: July 1, 1973; amended effective July 1, 2019.]

Staff Note (2019 Amendment)

Crim.R. 6

The changes to this Rule were made to make the Rule gender neutral. Further, language was added to subsection (D) so that the Rule would comply with Sup. R. 88 and would allow an interpreter to remain in the grand jury room during deliberation and voting. Subsection (E) was changed to clarify that the deliberations and the vote of the grand jury are secret; it was meant to give emphasis to what is already recognized law in Ohio, and it was not meant to be a substantive change.

RULE 7. The Indictment and the Information.

(A) Use of indictment or information. A felony that may be punished by death or life imprisonment shall be prosecuted by indictment. All other felonies shall be prosecuted by indictment, except that after a defendant has been advised by the court of the nature of the charge against the defendant and of the defendant's right to indictment, the defendant may waive that right in writing and in open court.

Where an indictment is waived, the offense may be prosecuted by information, unless an indictment is filed within fourteen days after the date of waiver. If an information or indictment is not filed within fourteen days after the date of waiver, the defendant shall be discharged and the complaint dismissed. This division shall not prevent subsequent prosecution by information or indictment for the same offense.

A misdemeanor may be prosecuted by indictment or information in the court of common pleas, or by complaint in the juvenile court, as defined in the Rules of Juvenile Procedure, and in courts inferior to the court of common pleas. An information may be filed without leave of court.

(B) Nature and contents. The indictment shall be signed in accordance with Crim. R. 6(C) and (F) and contain a statement that the defendant has committed a public offense specified in the indictment. The information shall be signed by the prosecuting attorney or in the name of the prosecuting attorney by an assistant prosecuting attorney and shall contain a statement that the defendant has committed a public offense specified in the information. The statement may be made in ordinary and concise language without technical averments or allegations not essential to be proved. The statement may be in the words of the applicable section of the statute, provided the words of that statute charge an offense, or in words sufficient to give the defendant notice of all the elements of the offense with which the defendant is charged. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. Each count of the indictment or information shall state the numerical designation of the statute that the defendant is alleged to have violated. Error in the numerical designation or omission of the numerical designation shall not be ground for dismissal of the indictment or information, or for reversal of a conviction, if the error or omission did not prejudicially mislead the defendant.

(C) Surplusage. The court on motion of the defendant or the prosecuting attorney may strike surplusage from the indictment or information.

(D) Amendment of indictment, information, or complaint. The court may at any time before, during, or after a trial amend the indictment, information, complaint, or bill of particulars, in respect to any defect, imperfection, or omission in form or substance, or of any variance with the evidence, provided no change is made in the name or identity of the crime charged. If any amendment is made to the substance of the indictment, information, or complaint, or to cure a variance between the indictment, information, or complaint and the proof, the defendant is entitled to a discharge of the jury on the defendant's motion, if a jury has been impaneled, and to a reasonable continuance, unless it clearly appears from the whole proceedings that the defendant has not been misled or prejudiced by the defect or variance in respect to which

the amendment is made, or that the defendant's rights will be fully protected by proceeding with the trial, or by a postponement thereof to a later day with the same or another jury. Where a jury is discharged under this division, jeopardy shall not attach to the offense charged in the amended indictment, information, or complaint. No action of the court in refusing a continuance or postponement under this division is reviewable except after motion to grant a new trial therefor is refused by the trial court, and no appeal based upon such action of the court shall be sustained nor reversal had unless, from consideration of the whole proceedings, the reviewing court finds that a failure of justice resulted.

(E) Bill of particulars. When the defendant makes a written request within twenty-one days after arraignment but not later than seven days before trial, or upon court order, the prosecuting attorney shall furnish the defendant with a bill of particulars setting up specifically the nature of the offense charge and of the conduct of the defendant alleged to constitute the offense. A bill of particulars may be amended at any time subject to such conditions as justice requires.

[Effective: July 1, 1973; amended effective July 1, 1993; July 1, 2000.]

Staff Note (July 1, 2000 Amendment)

Rule 7(A) Use of Indictment or Information

The July 1, 2000 amendment permits the prosecution of misdemeanor charges by complaint in the juvenile division of a common pleas court. Prior to this amendment, a misdemeanor could only be prosecuted in the common pleas court by an indictment or information.

The impetus for the amendment was statutes holding parents criminally accountable for their children's chronic truancy. Since these charges are misdemeanors, prior to the amendment of this rule a parent could be prosecuted only by a grand jury indictment or an information. Obtaining a grand jury indictment is costly and time consuming, and a defendant must first waive indictment before an information can be used. This amendment, which limits the use of complaints to proceedings in juvenile court, is intended to help prosecutors and juvenile authorities handle truancy and other misdemeanor charges in a more expeditious and less costly manner than under the prior rule.

RULE 8. Joinder of Offenses and Defendants.

(A) Joinder of offenses. Two or more offenses may be charged in the same indictment, information or complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct.

(B) Joinder of defendants. Two or more defendants may be charged in the same indictment, information or complaint if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses, or in the same course of criminal conduct. Such defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

[Effective: July 1, 1973.]

RULE 9. Warrant or Summons Upon Indictment or Information.

(A) Issuance. Upon the request of the prosecuting attorney the clerk shall forthwith issue a warrant for each defendant named in the indictment or in the information. The clerk shall issue a summons instead of a warrant where the defendant has been released pursuant to Rule 46 and is indicted for the same offense for which he was bound over pursuant to Rule 5. In addition, the clerk shall issue a summons instead of a warrant upon the request of the prosecuting attorney or by direction of the court.

Upon like request or direction, the clerk shall issue more than one warrant or summons for the same defendant. He shall deliver the warrant or summons to any officer authorized by law to execute or serve it. If a defendant fails to appear in response to summons, a warrant shall issue.

(B) Form of warrant and summons.

(1) Warrant. The form of the warrant shall be as provided in Rule 4(C)(1) except that it shall be signed by the court or clerk. It shall describe the offense charged in the indictment or information. A copy of the indictment or information shall be attached to the warrant which shall command that the defendant be arrested and brought before the court issuing the warrant without unnecessary delay.

(2) Summons. The summons shall be in the same form as the warrant, except that it shall not command that the defendant be arrested, but shall order the defendant to appear before the court at a stated time and place and inform him that he may be arrested if he fails to appear at the time and place stated in the summons. A copy of the indictment or information shall be attached to the summons.

(C) Execution or service; return.

(1) Execution or service. Warrants shall be executed or summons served as provided in Rule 4(D) and the arrested person shall be treated in accordance with Rule 4(E)(1).

(2) Return. The officer executing a warrant shall make return thereof to the court.

When the person serving summons is unable to serve a copy of the summons within twenty-eight days of the date of issuance, he shall endorse that fact and the reasons therefor on the summons and return the summons, and copies to the clerk, who shall make the appropriate entry on the appearance docket.

At the request of the prosecuting attorney made at any time while the indictment or information is pending, a warrant returned unexecuted and not canceled, or a summons returned unserved, or a copy thereof, may be delivered by the clerk to the sheriff or other authorized person for execution or service.

[Effective: July 1, 1973; amended effective July 1, 1975.]

RULE 10. Arraignment.

(A) Arraignment procedure. Arraignment shall be conducted in open court, and shall consist of reading the indictment, information or complaint to the defendant, or stating to the defendant the substance of the charge, and calling on the defendant to plead thereto. The defendant may in open court waive the reading of the indictment, information, or complaint. The defendant shall be given a copy of the indictment, information, or complaint, or shall acknowledge receipt thereof, before being called upon to plead.

(B) Presence of defendant.

(1) The defendant must be present, except that the court, with the written consent of the defendant and the approval of the prosecuting attorney, may permit arraignment without the presence of the defendant, if a plea of not guilty is entered.

(2) In a felony or misdemeanor arraignment or a felony initial appearance, a court may permit the presence and participation of a defendant by remote contemporaneous video provided the use of video complies with the requirements set out in Rule 43(A)(2) of these rules. This division shall not apply to any other felony proceeding.

(C) Explanation of rights. When a defendant not represented by counsel is brought before a court and called upon to plead, the judge or magistrate shall cause the defendant to be informed and shall determine that the defendant understands all of the following:

(1) The defendant has a right to retain counsel even if the defendant intends to plead guilty, and has a right to a reasonable continuance in the proceedings to secure counsel.

(2) The defendant has a right to counsel, and the right to a reasonable continuance in the proceeding to secure counsel, and, pursuant to Crim. R. 44, the right to have counsel assigned without cost if the defendant is unable to employ counsel.

(3) The defendant has a right to bail, if the offense is bailable.

(4) The defendant need make no statement at any point in the proceeding, but any statement made can and may be used against the defendant.

(D) Joint arraignment. If there are multiple defendants to be arraigned, the judge or magistrate may by general announcement advise them of their rights as prescribed in this rule.

[Effective: July 1, 1973; amended effective July 1, 1990; amended effective July 1, 2008.]

Staff Note (July 1, 2008 amendments)

In 1995 the Ohio Supreme Court authorized video teleconferencing for arraignments as long as it was "functionally equivalent to live, in-person arraignment" (*State v. Phillips,* 1995 Ohio 171). This amendment will codify *Philips* by explicitly giving a court the option of using video teleconferencing at arraignments, and will clarify that if video teleconferencing is used, the procedure must conform to the requirements of Rule 43.

RULE 11. Pleas, Rights Upon Plea.

(A) Pleas. A defendant may plead not guilty, not guilty by reason of insanity, guilty or, with the consent of the court, no contest. A plea of not guilty by reason of insanity shall be made in writing by either the defendant or the defendant's attorney. All other pleas may be made orally either in-person or by remote contemporaneous video in conformity with Crim.R. 43(A). The pleas of not guilty and not guilty by reason of insanity may be joined. If a defendant refuses to plead, the court shall enter a plea of not guilty on behalf of the defendant.

(B) Effect of guilty or no contest pleas. With reference to the offense or offenses to which the plea is entered:

(1) The plea of guilty is a complete admission of the defendant's guilt.

(2) The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding.

(3) When a plea of guilty or no contest is accepted pursuant to this rule, the court, except as provided in divisions (C)(3) and (4) of this rule, shall proceed with sentencing under Crim.R. 32.

(C) Pleas of guilty and no contest in felony cases.

(1) Where in a felony case the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to Crim.R. 44 by appointed counsel, waives this right.

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally either in-person or by remote contemporaneous video in conformity with Crim.R. 43(A) and doing all of the following:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state

to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

(3) With respect to aggravated murder committed on and after January 1, 1974, the defendant shall plead separately to the charge and to each specification, if any. A plea of guilty or no contest to the charge waives the defendant's right to a jury trial, and before accepting a plea of guilty or no contest the court shall so advise the defendant and determine that the defendant understands the consequences of the plea.

If the indictment contains no specification, and a plea of guilty or no contest to the charge is accepted, the court shall impose the sentence provided by law.

If the indictment contains one or more specifications, and a plea of guilty or no contest to the charge is accepted, the court may dismiss the specifications and impose sentence accordingly, in the interests of justice.

If the indictment contains one or more specifications that are not dismissed upon acceptance of a plea of guilty or no contest to the charge, or if pleas of guilty or no contest to both the charge and one or more specifications are accepted, a court composed of three judges shall: (a) determine whether the offense was aggravated murder or a lesser offense; and (b) if the offense is determined to have been a lesser offense, impose sentence accordingly; or (c) if the offense is determined to have been aggravated murder, proceed as provided by law to determine the presence or absence of the specified aggravating circumstances and of mitigating circumstances, and impose sentence accordingly.

(4) With respect to all other cases the court need not take testimony upon a plea of guilty or no contest.

(D) Misdemeanor cases involving serious offenses. In misdemeanor cases involving serious offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such plea without first addressing the defendant personally and informing the defendant of the effect of the pleas of guilty, no contest, and not guilty and determining that the defendant is making the plea voluntarily. Where the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to Crim.R. 44 by appointed counsel, waives this right.

(E) Misdemeanor cases involving petty offenses. In misdemeanor cases involving petty offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty.

The counsel provisions of Crim.R. 44(B) and (C) apply to division (E) of this rule.

(F) Negotiated plea cases. When a negotiated plea of guilty or no contest to one or more offenses charged or to one or more other or lesser offenses is offered, the underlying

agreement upon which the plea is based shall be stated on the record in open court. To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, before accepting the plea, the trial court shall allow an alleged victim of the crime to raise any objection to the terms of the plea agreement.

(G) Refusal of court to accept plea. If the court refuses to accept a plea of guilty or no contest, the court shall enter a plea of not guilty on behalf of the defendant. In such cases neither plea shall be admissible in evidence nor be the subject of comment by the prosecuting attorney or court.

(H) Defense of insanity. The defense of not guilty by reason of insanity must be pleaded at the time of arraignment, except that the court for good cause shown shall permit such a plea to be entered at any time before trial.

[Effective: July 1, 1973; amended effective July 1, 1976; July 1, 1980; July 1, 1998; July 1, 2019: July 1, 2021.]

Staff Note (July 1, 2019 Amendment)

Crim.R. 11(F)

The amendment to Crim R 11(F) was made to comply with the 2017 amendment to Article I, Section 10a of the Ohio Constitution, also known as Marsy's Law.

Staff Note (September 1, 2012)

Courts and litigants are advised that the Revised Code contains additional requirements, not contained in Crim.R. 11, for advising certain defendants at a plea of guilty or no contest of other possible consequences in specified circumstances. See, e.g., Sections 2943.031 (possible immigration consequences), 2943.032 (possible extension of prison term), and 2943.033 (possible firearm restriction) of the Ohio Revised Code. Other plea requirements not contained in Crim.R. 11 may also apply. See, e.g., Section 2937.07 (requiring explanation of circumstances in certain misdemeanor cases) of the Ohio Revised Code.

RULE 12. Pleadings and Motions Before Trial: Defenses and Objections.

(A) Pleadings and motions. Pleadings in criminal proceedings shall be the complaint, and the indictment or information, and the pleas of not guilty, not guilty by reason of insanity, guilty, and no contest. All other pleas, demurrers, and motions to quash, are abolished. Defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(B) Filing with the court defined. The filing of documents with the court, as required by these rules, shall be made by filing them with the clerk of court, except that the judge may permit the documents to be filed with the judge, in which event the judge shall note the filing date on the documents and transmit them to the clerk. A court may provide~~,~~ by local rules for the filing of documents by electronic means. If the court adopts such local rules, they shall include all of the following:

(1) The complaint, if permitted by local rules to be filed electronically, shall comply with Crim.R. 3.

(2) Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall order the filing stricken.

(3) A provision shall specify the days and hours during which electronically transmitted documents will be received by the court, and a provision shall specify when documents received electronically will be considered to have been filed.

(4) Any document filed electronically that requires a filing fee may be rejected by the clerk of court unless the filer has complied with the mechanism established by the court for the payment of filing fees.

(C) Pretrial motions. Prior to trial, any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue. The following must be raised before trial:

(1) Defenses and objections based on defects in the institution of the prosecution;

(2) Defenses and objections based on defects in the indictment, information, or complaint (other than failure to show jurisdiction in the court or to charge an offense, which objections shall be noticed by the court at any time during the pendency of the proceeding);

(3) Motions to suppress evidence, including but not limited to statements and identification testimony, on the ground that it was illegally obtained. Such motions shall be filed in the trial court only.

(4) Requests for discovery under Crim. R. 16;

(5) Requests for severance of charges or defendants under Crim. R. 14.

(6) Requests for the appointment of expert witnesses in cases where the defendant is unable to afford the cost of the requested expert assistance. Upon request by defense counsel, a motion in this regard may be made in camera and ex parte, and the order concerning this appointment shall be under seal.

(7) Requests for the appointment of investigators in cases where the defendant is unable to afford the cost of the requested investigative assistance. Upon request by defense counsel, a motion in this regard may be made in camera and ex parte, and the order concerning the appointment shall be under seal.

(D) Motion date. All pretrial motions except as provided in Crim. R. 7(E) and 16(M) shall be made within thirty-five days after arraignment or seven days before trial, whichever is earlier. The court in the interest of justice may extend the time for making pretrial motions.

(E) Notice by the prosecuting attorney of the intention to use evidence.

(1) At the discretion of the prosecuting attorney. At the arraignment or as soon thereafter as is practicable, the prosecuting attorney may give notice to the defendant of the prosecuting attorney's intention to use specified evidence at trial, in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under division (C)(3) of this rule.

(2) At the request of the defendant. At the arraignment or as soon thereafter as is practicable, the defendant, in order to raise objections prior to trial under division (C)(3) of this rule, may request notice of the prosecuting attorney's intention to use evidence in chief at trial, which evidence the defendant is entitled to discover under Crim. R. 16.

(F) Ruling on motion. The court may adjudicate a motion based upon briefs, affidavits, the proffer of testimony and exhibits, a hearing, or other appropriate means.

A motion made pursuant to divisions (C)(1) to (C)(5) of this rule shall be determined before trial. Any other motion made pursuant to division (C) of this rule shall be determined before trial whenever possible. Where the court defers ruling on any motion made by the prosecuting attorney before trial and makes a ruling adverse to the prosecuting attorney after the commencement of trial, and the ruling is appealed pursuant to law with the certification required by division (K) of this rule, the court shall stay the proceedings without discharging the jury or dismissing the charges.

Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(G) Return of tangible evidence. Where a motion to suppress tangible evidence is granted, the court upon request of the defendant shall order the property returned to the defendant if the defendant is entitled to possession of the property. The order shall be stayed pending appeal by the state pursuant to division (K) of this rule.

(H) Effect of failure to raise defenses or objections. Failure by the defendant to raise defenses or objections or to make requests that must be made prior to trial, at the time set by the court pursuant to division (D) of this rule, or prior to any extension of time made by the court, shall constitute waiver of the defenses or objections, but the court for good cause shown may grant relief from the waiver.

(I) Effect of plea of no contest. The plea of no contest does not preclude a defendant from asserting upon appeal that the trial court prejudicially erred in ruling on a pretrial motion, including a pretrial motion to suppress evidence.

(J) Effect of determination. If the court grants a motion to dismiss based on a defect in the institution of the prosecution or in the indictment, information, or complaint, it may also order that the defendant be held in custody or that the defendant's bail be continued for a specified time not exceeding fourteen days, pending the filing of a new indictment, information, or complaint. Nothing in this rule shall affect any statute relating to periods of limitations. Nothing in this rule shall affect the state's right to appeal an adverse ruling on a motion under divisions (C)(1) or (2) of this rule, when the motion raises issues that were formerly raised pursuant to a motion to quash, a plea in abatement, a demurrer, or a motion in arrest of judgment.

(K) Appeal by state. When the state takes an appeal as provided by law from an order suppressing or excluding evidence, or from an order directing pretrial disclosure of evidence, the prosecuting attorney shall certify that both of the following apply:

(1) the appeal is not taken for the purpose of delay;

(2) the ruling on the motion or motions has rendered the state's proof with respect to the pending charge so weak in its entirety that any reasonable possibility of effective prosecution has been destroyed, or the pretrial disclosure of evidence ordered by the court will have one of the effects enumerated in Crim. R. 16(D).

The appeal from an order suppressing or excluding evidence shall not be allowed unless the notice of appeal and the certification by the prosecuting attorney are filed with the clerk of the trial court within seven days after the date of the entry of the judgment or order granting the motion. Any appeal taken under this rule shall be prosecuted diligently.

If the defendant previously has not been released, the defendant shall, except in capital cases, be released from custody on the defendant's own recognizance pending appeal when the prosecuting attorney files the notice of appeal and certification.

This appeal shall take precedence over all other appeals.

If an appeal from an order suppressing or excluding evidence pursuant to this division results in an affirmance of the trial court, the state shall be barred from prosecuting the defendant for the same offense or offenses except upon a showing of newly discovered evidence that the state could not, with reasonable diligence, have discovered before filing of the notice of appeal.

(L) Motions by alleged victim. To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall allow an alleged victim of the crime to file pretrial motions in accordance with the time parameters in subsection (D).

[Effective: July 1, 1973; amended effective July 1, 1975; July 1, 1980; July 1, 1995; July 1, 1998; July 1, 2001; July 1, 2010; July 1, 2011; July 1, 2013; July 1, 2019.]

Staff Note (July 1, 2001 Amendment)

Criminal Rule 12 Pleadings and Motions Before Trial: Defenses and Objections
Criminal Rule 12(B) Filing with the Court Defined

The amendments to this rule were part of a group of amendments that were submitted by the Ohio Courts Digital Signatures Task Force to establish minimum standards for the use of information systems, electronic signatures, and electronic filing. The substantive amendment to this rule was the addition of division (B). Comparable amendments were made to Civil Rule 5 and 73 (for probate courts), Juvenile Rule 8, and Appellate Rule 13.

As part of this electronic filing and signature project, the following rules were amended effective July 1, 2001: Civil Rules 5, 11, and 73; Criminal Rule 12; Juvenile Rule 8; and Appellate Rules 13 and 18. In addition, Rule 26 of the Rules of Superintendence for Courts of Ohio was amended and Rule of Superintendence 27 was added to complement the rules of procedure. Superintendence Rule 27 establishes a process by which minimum standards for information technology are promulgated, and requires that courts submit any local rule involving the use of information technology to a technology standards committee designated by the Supreme Court for approval.

Staff Note (July 1, 2019 Amendment)

Crim.R. 12(L)

Section (L) was added to comply with the 2017 amendment to Article I, Section 10a of the Ohio Constitution, also known as Marsy's Law.

RULE 12.1. Notice of Alibi.

Whenever a defendant in a criminal case proposes to offer testimony to establish an alibi on his behalf, the defendant shall, not less than thirty days before trial in a felony case and fourteen days before trial in a misdemeanor case, file and serve upon the prosecuting attorney a notice in writing of the defendant's intention to claim alibi. The notice shall include specific information as to the place at which the defendant claims to have been at the time of the alleged offense. If the defendant fails to file such written notice, the court may exclude evidence offered by the defendant for the purpose of proving such alibi, unless the court determines that in the interest of justice such evidence should be admitted.

[Effective: July 1, 1973; amended effective July 1, 2022.]

RULE 12.2. Notice of Self-Defense.

Whenever a defendant in a criminal case proposes to offer evidence or argue self-defense, defense of another, or defense of that person's residence, the defendant shall, not less than thirty days before trial in a felony case and fourteen days before trial in a misdemeanor case, give notice in writing of such intent. The notice shall include specific information as to any prior incidents or circumstances upon which defendant intends to offer evidence related to conduct of the alleged victim, and the names and addresses of any witnesses defendant may call at trial to offer testimony related to the defense. If the defendant fails to file such written notice, the court may exclude evidence offered by the defendant related to the defense, unless the court determines that in the interest of justice such evidence should be admitted.

[Effective: July 1, 2022.]

Staff Note (July 1, 2022 Amendment)

In 2019, the General Assembly amended R.C. 2901.05(B)(1) to shift the burden of proof in a self-defense case from the defendant to the prosecution. If there is evidence presented by the defense that tends to support that the defendant acted in self-defense, defense of another, or defense of the person's residence, the prosecution must prove beyond a reasonable doubt that the defendant did not act in self-defense. This rule was added in response to that change in the law.

RULE 13. Trial Together of Indictments or Informations or Complaints.

The court may order two or more indictments or informations or both to be tried together, if the offenses or the defendants could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

The court may order two or more complaints to be tried together, if the offenses or the defendants could have been joined in a single complaint. The procedure shall be the same as if the prosecution were under such single complaint.

[Effective: July 1, 1973.]

RULE 14. Relief From Prejudicial Joinder.

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment, information, or complaint, or by such joinder for trial together of indictments, informations or complaints, the court shall order an election or separate trial of counts, grant a severance of defendants, or provide such other relief as justice requires. In ruling on a motion by a defendant for severance, the court shall order the prosecuting attorney to deliver to the court for inspection pursuant to Rule 16(B)(1) any statements or confessions made by the defendants which the state intends to introduce in evidence at the trial.

When two or more persons are jointly indicted for a capital offense, each of such persons shall be tried separately, unless the court orders the defendants to be tried jointly, upon application by the prosecuting attorney or one or more of the defendants, and for good cause shown.

[Effective: July 1, 1973; amended effective July 1, 2011.]

RULE 15. Deposition.

(A) When taken. If it appears probable that a prospective witness will be unable to attend or will be prevented from attending a trial or hearing, and if it further appears that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment, information, or complaint shall upon motion of the defense attorney or the prosecuting attorney and notice to all the parties, order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

If a witness is committed for failure to give bail or to appear to testify at a trial or hearing, the court on written motion of the witness and notice to the parties, may direct that his deposition be taken. After the deposition is completed, the court may discharge the witness.

(B) Notice of taking. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or fix the place of deposition.

(C) Attendance of defendant. The defendant shall have the right to attend the deposition. If he is confined the person having custody of the defendant shall be ordered by the court to take him to the deposition. The defendant may waive his right to attend the deposition, provided he does so in writing and in open court, is represented by counsel, and is fully advised of his right to attend by the court at a recorded proceeding.

(D) Counsel. Where a defendant is without counsel the court shall advise him of his right to counsel and assign counsel to represent him unless the defendant waives counsel or is able to obtain counsel. If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that all deposition expenses, including but not limited to travel and subsistence of the defendant's attorney for attendance at such examination together with a reasonable attorney fee, in addition to the compensation allowed for defending the defendant, and the expenses of the prosecuting attorney in the taking of such deposition, shall be paid out of public funds upon the certificate of the court making such order. Waiver of counsel shall be as prescribed in Rule 44(C).

(E) How taken. Depositions shall be taken in the manner provided in civil cases. The prosecution and defense shall have the right, as at trial, to full examination of witnesses. A deposition taken under this rule shall be filed in the court in which the action is pending.

(F) Use. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if the witness is unavailable, as defined in Rule 804(A) of the Ohio Rules of Evidence. Any deposition may also be used by any party for the purpose of refreshing the recollection, or contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, any party may offer other parts.

(G) Objections to admissibility. Objections to receiving in evidence a deposition or a part thereof shall be made as provided in civil actions.

[Effective: July 1, 1973; amended effective July 1, 2012.]

Staff Note (July 1, 2012 Amendment)

Prior to amendment, Crim.R. 15(F) authorized the use of a deposition at trial in specified circumstances. In some cases, Crim.R. 15(F) purported to authorize uses that violated the confrontation clause of the Sixth Amendment to the U.S. Constitution. See, e.g., *Earhart v. Konteh* (6th Cir. 2001), 269 F.3d 629. The amendment seeks to eliminate that problem by permitting the use of a deposition only when the witness is unavailable as defined in Evid.R. 804(A).

RULE 16. Discovery and Inspection.

(A) Purpose, scope, and reciprocity. This rule is to provide all parties in a criminal case with the information necessary for a full and fair adjudication of the facts, to protect the integrity of the justice system and the rights of defendants, and to protect the well-being of witnesses, victims, and society at large. All duties and remedies are subject to a standard of due diligence, apply to the defense and the prosecution equally, and are intended to be reciprocal. Once discovery is initiated by demand of the defendant, all parties have a continuing duty to supplement their disclosures.

(B) Discovery: right to copy or photograph. Upon receipt of a written demand for discovery by the defendant, and except as provided in division (C), (D), (E), (F), or (J) of this rule, the prosecuting attorney shall provide copies or photographs, or permit counsel for the defendant to copy or photograph, the following items related to the particular case indictment, information, or complaint, and which are material to the preparation of a defense, or are intended for use by the prosecuting attorney as evidence at the trial, or were obtained from or belong to the defendant, within the possession of, or reasonably available to the state, subject to the provisions of this rule:

(1) Any written or recorded statement by the defendant or a co-defendant, including police summaries of such statements, and including grand jury testimony by either the defendant or co-defendant;

(2) Criminal records of the defendant, a co-defendant, and the record of prior convictions that could be admissible under Rule 609 of the Ohio Rules of Evidence of a witness in the state's case-in-chief, or that it reasonably anticipates calling as a witness in rebuttal;

(3) Subject to divisions (D)(4) and (E) of this rule, all laboratory or hospital reports, books, papers, documents, photographs, tangible objects, buildings, or places;

(4) Subject to division (D)(4) and (E) of this rule, results of physical or mental examinations, experiments or scientific tests;

(5) Any evidence favorable to the defendant and material to guilt or punishment;

(6) All reports from peace officers, the Ohio State Highway Patrol, and federal law enforcement agents, provided however, that a document prepared by a person other than the witness testifying will not be considered to be the witness's prior statement for purposes of the cross examination of that particular witness under the Rules of Evidence unless explicitly adopted by the witness;

(7) Any written or recorded statement by a witness in the state's case-in-chief, or that it reasonably anticipates calling as a witness in rebuttal.

(C) Prosecuting attorney's designation of "counsel only" materials. The prosecuting attorney may designate any material subject to disclosure under this rule as "counsel only" by stamping a prominent notice on each page or thing so designated. "Counsel only"

material also includes materials ordered disclosed under division (F) of this rule. Except as otherwise provided, "counsel only" material may not be shown to the defendant or any other person, but may be disclosed only to defense counsel, or the agents or employees of defense counsel, and may not otherwise be reproduced, copied or disseminated in any way. Defense counsel may orally communicate the content of the "counsel only" material to the defendant.

(D) Prosecuting attorney's certification of nondisclosure. If the prosecuting attorney does not disclose materials or portions of materials under this rule, the prosecuting attorney shall certify to the court that the prosecuting attorney is not disclosing material or portions of material otherwise subject to disclosure under this rule for one or more of the following reasons:

(1) The prosecuting attorney has reasonable, articulable grounds to believe that disclosure will compromise the safety of a witness, victim, or third party, or subject them to intimidation or coercion;

(2) The prosecuting attorney has reasonable, articulable grounds to believe that disclosure will subject a witness, victim, or third party to a substantial risk of serious economic harm;

(3) Disclosure will compromise an ongoing criminal investigation or a confidential law enforcement technique or investigation regardless of whether that investigation involves the pending case or the defendant;

(4) The statement is of a child victim of sexually oriented offense under the age of thirteen;

(5) The interests of justice require non-disclosure.

Reasonable, articulable grounds may include, but are not limited to, the nature of the case, the specific course of conduct of one or more parties, threats or prior instances of witness tampering or intimidation, whether or not those instances resulted in criminal charges, whether the defendant is pro se, and any other relevant information.

The prosecuting attorney's certification shall identify the nondisclosed material.

(E) Right of inspection in cases of sexual assault.

(1) In cases of sexual assault, defense counsel, or the agents or employees of defense counsel, shall have the right to inspect photographs, results of physical or mental examinations, or hospital reports, related to the indictment, information, or complaint as described in section (B)(3) or (B)(4) of this rule. Hospital records not related to the information, indictment, or complaint are not subject to inspection or disclosure. Upon motion by defendant, copies of the photographs, results of physical or mental examinations, or hospital reports, shall be provided to defendant's expert under seal and under protection from unauthorized dissemination pursuant to protective order.

(2) In cases involving a victim of a sexually oriented offense less than thirteen years of age, the court, for good cause shown, may order the child's statement be provided, under seal and pursuant to protective order from unauthorized dissemination, to defense counsel and the defendant's expert. Notwithstanding any provision to the contrary, counsel for the defendant shall be permitted to discuss the content of the statement with the expert.

(F) Review of prosecuting attorney's certification of non-disclosure. Upon motion of the defendant, the trial court shall review the prosecuting attorney's decision of nondisclosure or designation of "counsel only" material for abuse of discretion during an *in camera* hearing conducted seven days prior to trial, with counsel participating.

(1) Upon a finding of an abuse of discretion by the prosecuting attorney, the trial court may order disclosure, grant a continuance, or other appropriate relief.

(2) Upon a finding by the trial court of an abuse of discretion by the prosecuting attorney, the prosecuting attorney may file an interlocutory appeal pursuant to division (K) of Rule 12 of the Rules of Criminal Procedure.

(3) Unless, for good cause shown, the court orders otherwise, any material disclosed by court order under this section shall be deemed to be "counsel only" material, whether or not it is marked as such.

(4) Notwithstanding the provisions of (E)(2), in the case of a statement by a victim of a sexually oriented offense less than thirteen years of age, where the trial court finds no abuse of discretion, and the prosecuting attorney has not certified for nondisclosure under (D)(1) or (D)(2) of this rule, or has filed for nondisclosure under (D)(1) or (D)(2) of this rule and the court has found an abuse of discretion in doing so, the prosecuting attorney shall permit defense counsel, or the agents or employees of defense counsel to inspect the statement at that time.

(5) If the court finds no abuse of discretion by the prosecuting attorney, a copy of any discoverable material that was not disclosed before trial shall be provided to the defendant no later than commencement of trial. If the court continues the trial after the disclosure, the testimony of any witness shall be perpetuated on motion of the state subject to further cross-examination for good cause shown.

(G) Perpetuation of testimony. Where a court has ordered disclosure of material certified by the prosecuting attorney under division (F) of this rule, the prosecuting attorney may move the court to perpetuate the testimony of relevant witnesses in a hearing before the court, in which hearing the defendant shall have the right of cross-examination. A record of the witness's testimony shall be made and shall be admissible at trial as part of the state's case in chief, in the event the witness has become unavailable through no fault of the state.

(H) Discovery right to copy or photograph. If the defendant serves a written demand for discovery or any other pleading seeking disclosure of evidence on the prosecuting attorney, a reciprocal duty of disclosure by the defendant arises without further demand by the state. A public records request made by the defendant, directly or indirectly, shall be treated as a demand for

discovery in a criminal case if, and only if, the request is made to an agency involved in the prosecution or investigation of that case. The defendant shall provide copies or photographs, or permit the prosecuting attorney to copy or photograph, the following items related to the particular case indictment, information or complaint, and which are material to the innocence or alibi of the defendant, or are intended for use by the defense as evidence at the trial, or were obtained from or belong to the victim, within the possession of, or reasonably available to the defendant, except as provided in division (J) of this rule:

(1) All laboratory or hospital reports, books, papers, documents, photographs, tangible objects, buildings, or places;

(2) Results of physical or mental examinations, experiments, or scientific tests;

(3) Any evidence that tends to negate the guilt of the defendant, or is material to punishment, or tends to support an alibi. However, nothing in this rule shall be construed to require the defendant to disclose information that would tend to incriminate that defendant;

(4) All investigative reports, except as provided in division (J) of this rule;

(5) Any written or recorded statement by a witness in the defendant's case-in chief, or any witness that it reasonably anticipates calling as a witness in surrebuttal.

(I) Witness list. Each party shall provide to opposing counsel a written witness list, including names and addresses of any witness it intends to call in its case-in-chief, or reasonably anticipates calling in rebuttal or surrebuttal. The content of the witness list may not be commented upon or disclosed to the jury by opposing counsel, but during argument, the presence or absence of the witness may be commented upon.

(J) Information not subject to disclosure. The following items are not subject to disclosure under this rule:

(1) Materials subject to the work product protection. Work product includes, but is not limited to, reports, memoranda, or other internal documents made by the prosecuting attorney or defense counsel, or their agents in connection with the investigation or prosecution or defense of the case;

(2) Transcripts of grand jury testimony, other than transcripts of the testimony of a defendant or co-defendant. Such transcripts are governed by Crim. R. 6;

(3) Materials that by law are subject to privilege, or confidentiality, or are otherwise prohibited from disclosure.

(K) Expert witnesses; reports. An expert witness for either side shall prepare a written report summarizing the expert witness's testimony, findings, analysis, conclusions, or opinion, and shall include a summary of the expert's qualifications. The written report and summary of qualifications shall be subject to disclosure under this rule no later than twenty-one days prior to

trial, which period may be modified by the court for good cause shown, which does not prejudice any other party. Failure to disclose the written report to opposing counsel shall preclude the expert's testimony at trial.

(L) Regulation of discovery.

(1) The trial court may make orders regulating discovery not inconsistent with this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may make such other order as it deems just under the circumstances.

(2) The trial court specifically may regulate the time, place, and manner of a *pro se* defendant's access to any discoverable material not to exceed the scope of this rule.

(3) In cases in which the attorney-client relationship is terminated prior to trial for any reason, any material that is designated "counsel only", or limited in dissemination by protective order, must be returned to the state. Any work product derived from said material shall not be provided to the defendant.

(4) To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall allow an alleged victim of the crime, who has so requested, to be heard regarding objections to pretrial disclosure.

(M) Time of motions. A defendant shall make his demand for discovery within twenty-one days after arraignment or seven days before the date of trial, whichever is earlier, or at such reasonable time later as the court may permit. A party's motion to compel compliance with this rule shall be made no later than seven days prior to trial, or three days after the opposing party provides discovery, whichever is later. The motion shall include all relief sought under this rule. A subsequent motion may be made only upon showing of cause why such motion would be in the interest of justice.

[Effective: July 1, 1973; amended effective July 1, 2010; July 1, 2016; July 1, 2019.]

Staff Notes (July 1, 2010 Amendments)

Division (A): Purpose, Scope and Reciprocity

The purpose of the revisions to Criminal Rule 16 is to provide for a just determination of criminal proceedings and to secure the fair, impartial, and speedy administration of justice through the expanded scope of materials to be exchanged between the parties. Nothing in this rule shall inhibit the parties from exchanging greater discovery beyond the scope of this rule. The rule accelerates the timing of the exchange of materials, and expands the reciprocal duties in the exchange of materials. The limitations on disclosure permitted under this rule are believed to apply to the minority of criminal cases.

The new rule balances a defendant's constitutional rights with the community's compelling interest in a thorough, effective, and just prosecution of criminal acts.

The Ohio criminal defense bar, by and through the Ohio Association of Criminal Defense Lawyers and prosecutors, by and through the Ohio Prosecuting Attorneys Association, jointly drafted the rule and submitted committee notes to the Commission on the Rules of Practice and Procedure. The Commission on the Rules of Practice and Procedure discussed, modified, and adopted the notes submitted in developing these staff notes.

Division (B): Discovery: Right To Copy or Photograph

This division expands the State's duty to disclose materials and information beyond what was required under the prior rule. All disclosures must be made prior to trial. This division also requires the materials to be copied or photographed as opposed to inspection as permitted under the prior rule. Subject to several exceptions, the State must provide pretrial disclosure of all materials as listed in the enumerated divisions.

Division (C): Prosecuting Attorney's Designation of "Counsel Only" Materials

The State is empowered to limit dissemination of sensitive materials to defense counsel and agents thereof in certain instances. Documents marked as "Counsel Only" may be orally interpreted to the Defendant, or to counsel's agents and employees, but not shown or disseminated to other persons. The rule recognizes that defense counsel bears a duty as an officer of the court to physically retain "Counsel Only" material, and to limit its dissemination. Counsel's duty to the client is not implicated, since the rule expressly allows oral communication of the nature of the "Counsel Only" material.

Division (D): Prosecuting Attorney's Certification of Nondisclosure

This division provides a means to prevent disclosure of items or materials for limited reasons. The prosecution must be able to place reasonable limits on dissemination to preserve testimony and evidence from tampering or intimidation, and certain other enumerated purposes. The new rule explicitly recognizes that it is the prosecution's duty to assess the danger to witnesses and victims, and the need to protect those witnesses and victims by controlling the early disclosure of certain material, subject to judicial review.

A nondisclosure must be for one of the reasons enumerated in the rule, and must be certified in writing to the court. The certification need not disclose the contents or meaning of the nondisclosed material, but must describe it with sufficient particularity to identify it during judicial review as described in division (F).

The certification process recognizes the unique nature of sex crimes against children. In the event of a certification of nondisclosure, defense counsel will have the right to inspect the statement no later than the seven-day review hearing provided in subsection (F), which is an improvement from the prior Criminal Rule 16(B)(1)(g).

Finally, the rule recognizes that not every eventuality can be anticipated in the text of a rule, and allows nondisclosure in the interest of justice.

Division (E): Right of Inspection in Cases of Sexual Assault

This division recognizes the intensely personal nature of a sexual assault, and provides a special mechanism for discovery in such cases. It represents an exception to division (B).

The compromise between the interests in the privacy and dignity of the victim are balanced against the right of the defendant to a thorough review of the State's evidence by permitting inspection, but not copying, of certain materials. Upon motion of the defendant, the court may, in its discretion, permit these materials to be provided under seal to defense counsel and the defendant's expert.

In cases involving the sexual abuse of a child under the age of 13, upon motion and for good cause shown, the trial court may order dissemination of the child's statement under seal and pursuant to protective order to defense counsel and the defendant's expert. This provision facilitates meaningful communication between defense counsel and the defense expert, and to permit timely compliance with division (K) of the rule.

Division (E)(2) is intended to give sufficient time for an expert to evaluate the statement, and also to permit defense counsel to consult with the expert on the content of the statement and issues related to it. This division is designed to provide an exception to the nondisclosure procedure sufficient to permit the expert and defense counsel to effectively evaluate the statement. The protective order shall apply to defense counsel and defendant's experts and agents.

Division (F): Review of Prosecuting Attorney's Certification of Non-Disclosure

This division provides for judicial review at the trial court level of a prosecutor's certification of nondisclosure. As in many other executive branch decisions the standard for review, subject to constitutional protections, is an abuse of discretion – that is, was the prosecutor's decision unreasonable, arbitrary or capricious? The prosecution of a case is an executive function. The rule's nondisclosure provision is a tool to ensure the prosecutor is able to fulfill that executive function.

The prosecutor should possess extensive knowledge about a case, including matters not properly admissible in evidence but highly relevant to the safety of the victim, witnesses, or community. Accordingly, the rule vests in the prosecutor the authority for seeking protection by the nondisclosure, and deference when making a good faith decision about unpredictable prospective human behavior.

The review is conducted *in camera* on the objective criteria set out in division (D), seven days prior to trial, with defense counsel participating. If the Court finds an abuse of discretion, the material must be immediately disclosed to defense counsel. If the Court does not find an abuse of discretion, the material must nonetheless be disclosed no later than the commencement of trial. Further judicial review is provided by giving the prosecutor a right to an interlocutory appeal of an order of disclosure as provided for in Criminal Rule 12(K), which is amended to accommodate that process.

Upon motion of the State, the certification of nondisclosure or "Counsel Only" designation is reviewable by the trial judge in the *in camera* proceeding. The preferred practice is to record or transcribe the *in camera* review to preserve any issues for appeal and sealed to preserve the confidential nature of the information.

The *in camera* review is set seven days prior to trial so that it is, in essence, the end of the trial preparation stage. There was substantial debate regarding the time for this review. Seven days provides adequate opportunity for the defense to prepare for trial and respond to the content of any nondisclosed material. The protective purpose of this process would be destroyed if courts routinely granted continuances of a trial date after conducting the seven-day nondisclosure review. The Commission anticipated that continuances of trial dates would occur only in limited circumstances.

Division (F)(4) seeks to protect victims of sexual assault who are still in their tender years.

Division (G): Perpetuation of Testimony

This division provides that if after judicial review the Court orders disclosure of evidence, the prosecutor upon motion to the Court is given a right to perpetuate testimony in a pretrial hearing as set forth in the subsection.

Division (H): Discovery: Right to Copy or Photograph

The previous rule allowed for disclosure of specified relevant evidence in the possession of defense counsel to the State upon the State's motion. This division expands defense counsel's duty to disclose

materials and information beyond what was required under the prior rule. In this division a reciprocal duty of disclosure now arises upon defense counsel's motion for discovery without further demand from the State. This division requires the materials to be copied or photographed, as opposed to the prior rule that only allowed for inspection by the State. Subject to several exceptions covered in division (J), defense counsel must provide pretrial disclosure of materials as listed in the enumerated subsections. This division seeks to define the defense counsel's reciprocal duty of disclosure while respecting the constitutional and ethical obligations required in representing a client.

For the first time, defense counsel has a duty to provide the State with evidence that tends to support innocence or alibi. This allows the State to properly assess its case, and re-evaluate the prosecution. The Commission believes this provision will facilitate meaningful plea negotiation and just resolution.

Division (I): Witness List

This division imposes an equal duty on each party to disclose the list of witnesses that will be called at trial. It prohibits counsel from commenting on the witness lists but does not prohibit the commenting upon the absence or presence of a witness relevant to the proceeding. See, *State v. Hannah*, 54 Ohio St.2d 84, 374 N.E.2d 1359 (1978).

Division (J): Information Not Subject to Disclosure

This division clarifies what information is not subject to disclosure by either party for reasons of confidentiality, privilege, or due to their classification as documents determined to be work product. This division also references that the disclosure or nondisclosure of grand jury testimony is governed by Rule 6 of the Rules of Criminal Procedure.

Division (K): Expert Witnesses; Reports

The division requires disclosure of the expert witness's written report as detailed in the division no later than twenty-one days prior to trial. Failure to comply with the rule precludes the expert witness from testifying during trial. This prevents either party from avoiding pretrial disclosure of the substance of expert witness's testimony by not requesting a written report from the expert, or not seeking introduction of a report. This division does not require written reports of consulting experts who are not being called as witnesses.

Division (L): Regulation of Discovery

The trial court continues to retain discretion to ensure that the provisions of the rule are followed. This discretion protects the integrity of the criminal justice process while protecting the rights of the defendants, witnesses, victims, and society at large.

In cases in which a defendant initially proceeds *pro se*, the trial court may regulate the exchange of discoverable material to accommodate the absence of defense counsel. Said exchange must be consistent with and is not to exceed the scope of the rule. In cases in which the attorney-client relationship is terminated prior to trial for any purpose, any material designated "Counsel Only" or limited in dissemination by protective order must be returned to the State. Any work product derived from such material shall not be provided to the defendant.

The provisions of (L)(2) and (L)(3) are designed to give the court greater authority to regulate discovery in cases of a *pro se* defendant and addresses the problems that could arise if a defendant terminates the employment of his attorney and then demands everything in the attorney's file. This could frustrate the protections built into the rule to avoid release of material directly to the defendant in some cases.

Division (M): Time of Motions

This division requires timely compliance with all provisions of this rule subject to judicial review. Adherence to the requirements of this division will help to ensure the fair administration of justice.

Staff Note (July 1, 2016 Amendment)

In *State v. Athon*, 2013-Ohio-1956, the Court addressed the question of when a request of discovery by a criminal defendant triggers reciprocal discovery obligations under Crim.R. 16(H). The amendment seeks to put into effect the rule announced by the Court in *Athon*, and articulates a standard designed to allow defense counsel to be able to determine, at the time of filing a public records request, whether that request would trigger reciprocal discovery.

Staff Note (July 1, 2019 Amendment)

Crim.R. 16(L)

Section (L)(4) was added to comply with the 2017 amendment to Article I, Section 10a of the Ohio Constitution, also known as Marsy's Law.

RULE 17. Subpoena.

(A) For attendance of witnesses; form; issuance. Every subpoena issued by the clerk shall be under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in and file a copy thereof with the clerk before service.

(B) Defendants unable to pay. The court shall order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a defendant upon a satisfactory showing that the presence of the witness is necessary to an adequate defense and that the defendant is financially unable to pay the witness fees required by subdivision (D). If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be taxed as costs.

(C) For production of documentary evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein; but the court, upon motion made promptly and in any event made at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that the books, papers, documents or other objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time they are offered in evidence, and may, upon their production, permit them or portions thereof to be inspected by the parties or their attorneys.

(D) Service. A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, marshal, or a deputy of any, by a municipal or township policeman, by an attorney at law or by any person designated by order of the court who is not a party and is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by reading it to him in person or by leaving it at his usual place of residence, and by tendering to him upon demand the fees for one day's attendance and the mileage allowed by law. The person serving the subpoena shall file a return thereof with the clerk. If the witness being subpoenaed resides outside the county in which the court is located, the fees for one day's attendance and mileage shall be tendered without demand. The return may be forwarded through the postal service, or otherwise.

(E) Subpoena for taking depositions; place of examination. When the attendance of a witness before an official authorized to take depositions is required, the subpoena shall be issued by such person and shall command the person to whom it is directed to attend and give testimony at a time and place specified therein. The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible objects which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 16.

A person whose deposition is to be taken may be required to attend an examination in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court.

(F) Subpoena for a hearing or trial. At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the clerk of the court in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within this state.

(G) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court or officer issuing the subpoena.

[Effective: July 1, 1973.]

RULE 17.1. Pretrial Conference.

At any time after the filing of an indictment, information or complaint the court may, upon its own motion or the motion of any party, order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or defendant's counsel at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and defendant's counsel. The court shall not conduct pretrial conferences in any case in which a term of imprisonment is a possible penalty unless the defendant is represented by counsel or counsel has been waived pursuant to Crim. R. 44. In any case in which the defendant is not represented by counsel, any pretrial conference shall be conducted in open court and shall be recorded as provided in Crim. R. 22.

[Effective: July 1, 1973; amended effective July 1, 2000.]

Staff Note (July 1, 2000 Amendment)

Rule 17.1 Pretrial Conference

The prior rule prohibited courts from conducting pretrial conferences in criminal cases until the defendant was represented by counsel. The amendment to Crim. R. 17.1 permits a court to conduct a pretrial conference with an unrepresented defendant in certain circumstances. Specifically, in cases in which a term of imprisonment is not a possible penalty, the court may conduct a pretrial conference with an unrepresented defendant when the defendant has waived counsel pursuant to Crim. R. 44. In such a case, the pretrial conference must be conducted on the record in open court.

RULE 18. Venue and Change of Venue.

(A) General venue provisions. The venue of a criminal case shall be as provided by law.

(B) Change of venue; procedure upon change of venue. Upon the motion of any party or upon its own motion the court may transfer an action to any court having jurisdiction of the subject matter outside the county in which trial would otherwise be held, when it appears that a fair and impartial trial cannot be held in the court in which the action is pending.

(1) Time of motion. A motion under this rule shall be made within thirty-five days after arraignment or seven days before trial, whichever is earlier, or at such reasonable time later as the court may permit.

(2) Clerk's obligations upon change of venue. Where a change of venue is ordered the clerk of the court in which the cause is pending shall make copies of all of the papers in the action which, with the original complaint, indictment, or information, he shall transmit to the clerk of the court to which the action is sent for trial, and the trial and all subsequent proceedings shall be conducted as if the action had originated in the latter court.

(3) Additional counsel for prosecuting attorney. The prosecuting attorney of the political subdivision in which the action originated shall take charge of and try the case. The court to which the action is sent may on application appoint one or more attorneys to assist the prosecuting attorney in the trial, and allow the appointed attorneys reasonable compensation.

(4) Appearance of defendant, witnesses. Where a change of venue is ordered and the defendant is in custody, a warrant shall be issued by the clerk of the court in which the action originated, directed to the person having custody of the defendant commanding him to bring the defendant to the jail of the county to which the action is transferred, there to be kept until discharged. If the defendant on the date of the order changing venue is not in custody, the court in the order changing venue shall continue the conditions of release and direct the defendant to appear in the court to which the venue is changed. The court shall recognize the witnesses to appear before the court in which the accused is to be tried.

(5) Expenses. The reasonable expenses of the prosecuting attorney incurred in consequence of a change of venue, compensation of counsel appointed pursuant to Rule 44, the fees of the clerk of the court to which the venue is changed, the sheriff or bailiff, and of the jury shall be allowed and paid out of the treasury of the political subdivision in which the action originated.

[Effective: July 1, 1973.]

RULE 19. Magistrates.

(A) Appointment. A court other than a mayor's court may appoint one or more magistrates who shall have been engaged in the practice of law for at least four years and be in good standing with the Supreme Court of Ohio at the time of appointment. A magistrate may serve in more than one county or in two or more courts of the same criminal jurisdiction within the same county.

(B) Compensation.

The compensation of magistrates shall be fixed by the court, and no part of the compensation shall be taxed as costs.

(C) Authority.

(1) *Scope.* To assist courts of record and pursuant to reference under Crim. R. 19(D)(1), magistrates are authorized, subject to the terms of the relevant reference, to do any of the following:

(a) Conduct initial appearances and preliminary hearings pursuant to Crim. R. 5.

(b) Conduct arraignments pursuant to Crim. R. 10.

(c) Receive pleas, in accordance with Crim R. 11, only as follows:

(i) In felony and misdemeanor cases, accept and enter not guilty pleas.

(ii) In misdemeanor cases, accept and enter guilty and no contest pleas, determine guilt or innocence, receive statements in explanation and in mitigation of sentence, and recommend a penalty to be imposed. If imprisonment is a possible penalty for the offense charged, the matter may be referred only with the unanimous consent of the parties, in writing or on the record in open court.

(d) Conduct pretrial conferences pursuant to Crim. R. 17.1.

(e) Conduct proceedings to establish bail pursuant to Crim. R. 46.

(f) Hear and decide the following motions:

(i) Any pretrial or post-judgment motion in any misdemeanor case for which imprisonment is not a possible penalty.

(ii) Upon the unanimous consent of the parties in writing or on the record in open court, any pretrial or post-judgment motion in any misdemeanor case for which imprisonment is a possibility.

(g) Conduct proceedings upon application for the issuance of a temporary protection order as authorized by law.

(h) Conduct the trial of any misdemeanor case that will not be tried to a jury. If the offense charged is an offense for which imprisonment is a possible penalty, the matter may be referred only with unanimous consent of the parties in writing or on the record in open court.

(i) Conduct proceedings in Supreme Court certified dockets only when authorized and only in accordance with the authority granted by Sup.R. 36.33.

(j) Exercise any other authority specifically vested in magistrates by statute and consistent with this rule.

(2) *Regulation of proceedings.* In performing the responsibilities described in Crim. R. 19(C)(1), magistrates are authorized, subject to the terms of the relevant reference, to regulate all proceedings as if by the court and to do everything necessary for the efficient performance of those responsibilities, including but not limited to, the following:

(a) Issuing subpoenas for the attendance of witnesses and the production of evidence;

(b) Ruling upon the admissibility of evidence in misdemeanor cases in accordance with division (C)(1)(f) of this rule;

(c) Putting witnesses under oath and examining them;

(d) When necessary to obtain the presence of an alleged contemnor in cases involving direct or indirect contempt of court, issuing attachment for the alleged contemnor and setting the type, amount, and any conditions of bail pursuant to Crim. R. 46;

(e) Imposing, subject to Crim. R. 19(D)(8), appropriate sanctions for civil or criminal contempt committed in the presence of the magistrate.

(D) Proceedings in matters referred to magistrates.

(1) *Reference by court of record.*

(a) *Purpose and method.* A court of record may, for one or more of the purposes described in Crim. R. 19(C)(1), refer a particular case or matter of a category of cases or matters to a magistrate by a specific or general order of reference or by a rule.

(b) *Limitation.* A court of record may limit a reference by specifying or limiting the magistrate's powers, including, but not limited to, directing the magistrate to determine only particular issues, directing the magistrate to perform particular responsibilities, directing the magistrate to receive and report evidence only, fixing the time and place for beginning and closing any hearings, or fixing the time for filing any magistrate's decision on the matter or matters referred.

(2) *Magistrate's order; motion to set aside magistrate's order.*

(a) *Magistrate's order.*

(i) *Nature of order.* Subject to the terms of the relevant reference, a magistrate may enter pretrial orders without judicial approval if necessary to regulate the proceedings and if not dispositive of a claim or defense of a party.

(ii) *Form, filing, and service of magistrate's order.* A magistrate's order shall be in writing, identified as a magistrate's order in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys.

(b) *Motion to set aside magistrate's order.* Any party may file a motion with the court to set aside a magistrate's order. The motion shall state the moving party's reasons with particularity and shall be filed not later than ten days after the magistrate's order is filed. The pendency of a motion to set aside does not stay the effectiveness of the magistrate's order, though the magistrate or the court may by order stay the effectiveness of a magistrate's order.

(3) *Magistrate's decision; objections to magistrate's decision.*

(a) *Magistrate's decision.*

(i) *When required.* Subject to the terms of the relevant reference, a magistrate shall prepare a magistrate's decision respecting any matter referred under Crim. R. 19(D)(1).

(ii) *Findings of fact and conclusions of law.* Subject to the terms of the relevant reference, a magistrate's decision may be general unless findings of fact and conclusions of law are timely requested by a party or otherwise required by law. A request for findings of fact and conclusions of law shall be made before the entry of a magistrate's decision or within seven days after the filing of a magistrate's decision. If a request for findings of fact and conclusions of law is timely made, the magistrate may require any or all of the parties to submit proposed findings of fact and conclusions of law.

(iii) *Form; filing; and service of magistrate's decision.* A magistrate's decision shall be in writing, identified as a magistrate's decision in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys no later than three days after the decision is filed. A magistrate's decision shall indicate conspicuously that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Crim. R.19(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Crim. R.19(D)(3)(b).

(b) *Objections to magistrate's decision.*

(i) *Time for filing.* A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Crim. R. 19(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.

(ii) *Specificity of objection.* An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection.

(iii) *Objection to magistrate's factual finding; transcript or affidavit.* An objection to a factual finding, whether or not specifically designated as a finding of fact under Crim. R. 19(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

(iv) *Waiver of right to assign adoption by court as error on appeal.* Except for a claim of plain error, a party shall not assign on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Crim. R. 19(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Crim. R. 19(D)(3)(b).

(4) *Action of court on magistrate's decision and on any objection to magistrate's decision; entry of judgment or interim order by court.*

(a) *Action of court required.* A magistrate's decision is not effective unless adopted by the court.

(b) *Action on magistrate's decision.* Whether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification. A court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate. No sentence recommended by a magistrate shall be enforced until the court has entered judgment.

(c) *If no objections are filed.* If no timely objections are filed, the court may adopt a magistrate's decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate's decision.

(d) *Action on objections*. If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. Before so ruling, the court may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.

(e) *Entry of Judgment or interim order by court.* A court that adopts, rejects, or modifies a magistrate's decision shall also enter a judgment or interim order.

(i) *Judgment*. The court may enter a judgment either during the fourteen days permitted by Crim. R. 19(D)(3)(b)(i) for the filing of objections to a magistrate's decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by Crim. R. 19(D)(3)(b)(i) for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered.

(ii) *Interim order*. The court may enter an interim order on the basis of a magistrate's decision without waiting for or ruling on timely objections by the parties where immediate relief is justified. The timely filing of objections does not stay the execution of an interim order, but an interim order shall not extend more than twenty-eight days from the date of entry, subject to extension by the court in increments of twenty-eight additional days for good cause shown. An interim order shall comply with Civ. R. 54(A), be journalized pursuant to Civ. R. 58(A), and be served pursuant to Civ. R. 58(B).

(5) *Extension of time.* For good cause shown, the court shall allow a reasonable extension of time for a party to file a motion to set aside a magistrate's order or file objections to a magistrate's decision. "Good cause" includes, but is not limited to, a failure by the clerk to timely serve the party seeking the extension with the magistrate's order or decision.

(6) *Disqualification of a magistrate*. Disqualification of a magistrate for bias or other cause is within the discretion of the court and may be sought by motion filed with the court.

(7) *Recording of proceedings before a magistrate*. Except as otherwise provided by law, all proceedings before a magistrate shall be recorded in accordance with procedures established by the court.

(8) *Contempt in the presence of a magistrate.*

(a) *Contempt order*. Contempt sanctions under Crim. R. 19 (C)(2)(e) may be imposed only by a written order that recites the facts and certifies that the magistrate saw or heard the conduct constituting contempt.

(b) *Filing and provision of copies of contempt order*. A contempt order shall be filed and copies provided forthwith by the clerk to the appropriate judge of the court and to the subject of the order.

(c) *Review of contempt order by court; bail*. The subject of a contempt order may by motion obtain immediate review by a judge. A judge or the magistrate entering the contempt order may set bail pending judicial review of the order.

[Effective: July 1, 1990; amended effective July 1, 1995; July 1, 2000; July 1, 2006; amended effective July 1, 2011; July 1, 2021.]

Staff Note (July 1, 2006 Amendment)

Crim. R. 19 has been reorganized in an effort to make it more helpful to bench and bar and reflective of developments since the rule was last substantially revised effective July 1, 1995. The relatively-few significant changes included in the reorganization are noted below.

Rule 19(A) Appointment

Crim. R. 19(A) is taken verbatim from the first two sentences of former Crim. R. 19(A). Sup. R. 19 requires that all municipal courts having more than two judges appoint one or more magistrates to hear specified matters. See also Traf. R. 14.

Rule 19(B) Compensation

Crim. R. 19(B) is taken verbatim from former Crim. R. 19(B).

Rule 19(C) Authority

Crim. R. 19 (C) is drawn largely from former Crim. R. 19(C)(1), (2), and (4) and reflects the admonition of the Supreme Court that "a [magistrate's] oversight of an issue or issues, or even an entire trial, is not a *substitute* for the judicial functions but only an *aid* to them." *Hartt v. Munobe* (1993), 67 Ohio St.3d 3, 6, 1993-Ohio-177, 615 N.E.2d 617 (emphases added). Crim. R. 19(C)(1)(g) corresponds to existing authority for a magistrate to conduct temporary protection order proceedings in accordance with law, although consistent with the admonition in *Hartt*, any temporary protection order issued as a result of such proceedings must be signed by a judge.

Rule 19(D) Proceedings in Matters Referred to Magistrates

Crim. R. 19(D)(1) through (4) treat each of the steps that potentially occur if a magistrate participates: (1) reference to a magistrate; (2) magistrate's orders and motions to set aside magistrate's orders; (3) magistrate's decisions and objections to magistrate's decisions; and (4) action of the court on magistrate's decisions and on any objections to magistrate's decisions and entry of judgment or interim order by the court. Crim. R. 19(D)(5) through (8) deal with good cause extensions of time, disqualification of a magistrate, recording of proceedings before a magistrate, and contempt in the presence of a magistrate.

<u>Reference by court of record</u>

Crim. R. 19(D)(1), unlike former Crim. R. 19(C)(2) and (3), specifically authorizes reference of types of matters by rule as well as by a specific or general order of reference. In so doing, it recognizes existing practice in some courts. See, e.g., Loc. R. 99.02, Franklin Cty. Ct. of Common Pleas; Loc. R. 23(B),

Hamilton Cty. Ct. of Common Pleas; *State ex rel. Nalls v. Russo,* 96 Ohio St.3d 410, 412-13, 2002-Ohio-4907 at ¶¶ 20-24, 775 N.E.2d 522; *Davis v. Reed* (Aug. 31, 2000), 8th Dist. App. No. 76712, 2000 WL 1231462 at *2 (citing *White v. White* (1977), 50 Ohio App.2d 263, 266-268, 362 N.E.2d 1013), and *Partridge v. Partridge* (Aug. 27, 1999), 2nd Dist. App. No. 98 CA 38, 1999 WL 945046 at *2, (treating a local rule of the Greene Cty. Ct. of Common Pleas, Dom. Rel. Div., as a standing order of reference).

Magistrate's order; motion to set aside magistrate's order

Crim. R. 19(D)(2)(a)(i) generally authorizes a magistrate to enter orders without judicial approval if necessary to regulate the proceedings and, adapting language from Crim. R. 19(C)(5)(a), if "not dispositive of a claim or defense of a party." The language is intended to more accurately reflect proper and existing practice and is not intended to narrow the power of a magistrate to enter orders without judicial approval. Crim. R. 19(D)(2)(b) replaces language in former Crim. R. 19(C)(5)(b), which purported to authorize "[a]ny person" to "appeal to the court" from any order of a magistrate "by filing a motion to set the order aside." The new language refers to the appropriate challenge to a magistrate's order as solely a "motion to set aside" the order. Crim. R. 19(D)(2)(b) likewise limits the authorization to file a motion to "any *party*," though an occasional nonparty may be entitled to file a motion to set aside a magistrate's order. Sentence two of Crim. R. 19(D)(2)(b) changes the trigger for the ten days permitted to file a motion to set aside a magistrate's order from entry of the order to filing of the order, as the latter date is definite and more easily available to counsel.

Magistrate's decision; objections to magistrate's decision

Crim. R. 19(D)(3) prescribes procedures for preparation of a magistrate's decision and for any objections to a magistrate's decision.

Crim. R. 19(D)(3)(a)(ii), unlike former Crim. R. 19(E), adapts language from Civ. R. 52. The change is intended to make clear that a request for findings of fact and conclusions of law in a referred matter should be directed to the magistrate rather than to the court. Crim. R. 19(D)(3)(a)(ii) explicitly authorizes a magistrate's decision, subject to the terms of the relevant reference, to be general absent a timely request for findings of fact and conclusions of law or a provision of law that provides otherwise. Occasional decisions under former Civ. R. 53 said as much. See, *e.g.*, *In re Chapman* (Apr. 21, 1997), 12th Dist. App. No. CA96-07-127, 1997 WL 194879 at *2; *Burke v. Brown*, 4th Dist. App. No. 01CA731, 2002-Ohio-6164 at ¶ 21; and *Rush v. Schlagetter* (Apr. 15, 1997), 4th Dist. App. No. 96CA2215, 1997 WL 193169 at *3. For a table of sections of the Ohio Revised Code that purport to make findings of fact by judicial officers mandatory in specified circumstances, see 2 Klein-Darling, Ohio Civil Practice § 52-4, 2002 Pocket Part at 136 (West Group 1997).

Crim. R. 19(D)(3)(a)(iii) now requires that the magistrate's decision be served on the parties or their attorneys no later than three days after the decision was filed. The former rule contained no specific time requirement. The provision further requires that a magistrate's decision include a conspicuous warning of the waiver rule prescribed by amended Crim. R. 19(D)(3)(b)(iv). The latter provision now provides that a party shall not assign as error on appeal a court's adoption of any factual finding or legal conclusion of a magistrate, whether or not specifically designated as a finding of fact or conclusion of law under Crim. R. 19(D)(3)(a)(ii), unless that party has objected to that finding or conclusion as required by Crim. R. 19 (D)(3)(b). The amended waiver rule applies to any factual finding or legal conclusion in a magistrate's decision and the required warning is broadened accordingly.

Crim. R. 19(D)(3)(b)(i) retains the fourteen-day time for filing written objections to a magistrate's decision. While the rule continues to authorize filing of objections by a "party," it has been held that a non-party attorney can properly object to a magistrate's decision imposing sanctions on the attorney. *All Climate Heating & Cooling, Inc. v. Zee Properties, Inc.* (May 17, 2001), 10th Dist. App. No. 00AP-1141, 2001 WL 521408 at *3.

Sentence one of Crim. R. 19(D)(3)(b)(iii) requires that an objection to a factual finding in a magistrate's decision, whether or not specifically designated as a finding of fact under Crim. R.

19(D)(3)(a)(ii), be supported by a transcript of all the evidence submitted to the magistrate relevant to that fact or by an affidavit of that evidence if a transcript is not available. The Supreme Court has prescribed the consequences on appeal of failure to supply the requisite transcript or affidavit as follows: (1) "appellate review of the court's findings is limited to whether the trial court abused its discretion in adopting the [magistrate's decision]" and (2) "the appellate court is precluded from considering the transcript of the hearing submitted with the appellate record." *State ex rel. Duncan v. Chippewa Twp. Trustees* (1995), 73 Ohio St.3d 728, 730, 654 N.E.2d 1254.

Sentence two of Crim. R. 19(D)(3)(b)(iii) adds a new requirement, adapted from Loc. R. 99.05, Franklin Cty. Ct. of Common Pleas, that the requisite transcript or affidavit be filed within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. The last sentence of Crim. R. 19(D)(3)(b)(iii) allows an objecting party to seek leave of court to supplement previously filed objections where the additional objections become apparent after a transcript has been prepared.

Crim. R. 19(D)(3)(b)(iv) applies a "waiver rule" to include any factual finding or legal conclusion in a magistrate's decision, whether or not specifically designated as a finding of fact or conclusion of law under Crim. R. 19(D)(3)(a)(ii). The Rules Advisory Committee was unable to discern a principled reason to apply different requirements to, e.g., a factual finding depending on whether or not that finding is specifically designated as a finding of fact under Crim. R. 19(D)(3)(a)(ii). An exception to the "waiver rule" exists for plain error, which cannot be waived based on a party's failure to object to a magistrate's decision.

<u>Action of court on magistrate's decision and on any objections to magistrate's decision; entry of judgment or interim order by the court</u>

Crim. R. 19(D)(4)(a), like sentence one of former Crim. R. 19(E)(3)(a), confirms that a magistrate's decision is not effective unless adopted by the court.

Crim. R. 19(D)(4)(b) provides that a court may properly choose among a wide range of options in response to a magistrate's decision, whether or not objections are timely filed. See, *e.g.*, *Johnson v. Brown* 2nd Dist. App. No. 2002 CA 76, 2003-Ohio-1257 at ¶ 12 (apparently concluding that former Civ. R. 53 permitted the trial court to modify an aspect of the magistrate's decision to which no objection had been made).

Crim. R. 19(D)(4)(c) provides that if no timely objections are filed, the court may adopt a magistrate's decision unless the court determines that there is an error of law or other defect evident on the face of the decision. A similar result was reached under sentence two of former Crim. R. 19(E)(3)(a). See, *e.g.*, *Perrine v. Perrine*, 9th Dist. App. No. 20923, 2002-Ohio-4351 at ¶ 9; *City of Ravenna Police Dept. v. Sicuro* (Apr. 30, 2002), 11th Dist. App. No. 2001-P-0037; and *In re Weingart* (Jan. 17, 2002), 8th Dist. App. No. 79489, 2002 WL 68204 at *4. The language of Crim. R. 19(D)(4)(c) has been modified in an attempt to make clear that the obligation of the court does not extend to any "error of law" whatever but is limited to errors of law that are evident on the face of the decision. To the extent that decisions such as *In re Kelley*, 11th Dist. App. No. 2002-A-0088, 2003-Ohio-194 at ¶ 8 suggest otherwise, they are rejected. The "evident on the face" standard does not require that the court conduct an independent analysis of the magistrate's decision. The amended rule does not speak to the effect, if any, on the waiver rule prescribed by amended Crim. R. 19(D)(3)(b)(iv) of the "evident on the face" requirement. At least two courts have explicitly held that the "evident on the face" standard generates an exception to the waiver rule. *Dean-Kitts v. Dean*, 2nd Dist. App. No. 2002CA18, 2002-Ohio-5590 at ¶ 13 and *Hennessy v. Hennessy* (Mar. 24, 2000), 6th Dist. App. No. L-99-1170, 2000 WL 299450 at *1. Other decisions have indicated that the standard may generate an exception to the waiver rule. *Ohlin v. Ohlin* (Nov. 12, 1999), 11th Dist. App. No. 98-PA-87, 1999 WL 1580977 at *2; *Group One Realty, Inc. v. Dixie Intl. Co.* (1998), 125 Ohio App.3d 767, 769, 709 N.E.2d 589; *In re Williams* (Feb. 25, 1997), 10th Dist. App. No. 96APF06-778, 1997 WL 84659 at *1. However, the Supreme Court applied the waiver rule three times without so much as referring to the "evident on the face" standard as a possible exception. *State ex rel. Wilson v. Industrial Comm'n.* (2003), 100 Ohio St. 3d 23, 24, 2003-Ohio-4832 at ¶ 4, 795 N.E.2d 662; *State ex rel. Abate v. Industrial Common.* (2002), 96 Ohio

St.3d 343, 2002-Ohio-4796, 774 N.E.2d 1212; *State ex rel. Booher v. Honda of America Mfg. Co., Inc.* (2000), 88 Ohio St.3d 52, 2000-Ohio-269, 723 N.E.2d 571.

As noted above, even if no timely objection is made, a court may, pursuant to Crim. R. 19(D)(4)(b), properly choose a course of action other than adopting a magistrate's decision even if there is no error of law or other defect evident on the face of the decision.

Sentence one of Crim. R. 19(D)(4)(d), like sentence one of former Crim. R. 19(E)(3)(b), requires that the court rule on timely objections. Sentence two of Crim. R. 19(D)(4)(d) requires that, if timely objection is made to a magistrate's decision, the court give greater scrutiny than if no objections are made. The "independent review as to the objected matters" standard that applies if timely objection is made should be distinguished from the lesser scrutiny permitted if no objections to a magistrate's decision are timely filed, the latter standard having been retained by new Crim. R. 19(D)(4)(c), discussed above.

The "independent review as to the objected matters" standard is intended to exclude the more limited appellate standards of review and codify the practice approved by most courts of appeals. The Second District Court of Appeals has most clearly and consistently endorsed and explained that standard. *See, e.g., Crosby v. McWilliam*, 2nd Dist. App. No. 19856, 2003-Ohio-6063; *Quick v. Kwiatkowski* (Aug. 3, 2001), 2nd Dist. App. No. 18620, 2001 WL 871406 (acknowledging that "Magistrates truly do the 'heavy lifting' on which we all depend"); *Knauer v. Keener* (2001), 143 Ohio App.3d 789, 758 N.E.2d 1234. Other district courts of appeal have followed suit. *Reese v. Reese*, 3rd Dist. App. No. 14-03-42, 2004-Ohio-1395; *Palenshus v. Smile Dental Group, Inc.*, 3rd Dist. App. No. 3-02-46, 2003-Ohio-3095; *Huffer v. Chafin*, 5th Dist. App. No. 01 CA 74, 2002-Ohio-356; *Rhoads v. Arthur* (June 30, 1999), 5th Dist. App. No. 98CAF10050, 1999 WL 547574; *Barker v. Barker* (May 4, 2001), 6th Dist. App. No. L-00-1346, 2001 WL 477267; *In re Day*, 7th Dist. App. No. 01 BA 28, 2003-Ohio-1215; *State ex rel. Ricart Auto. Personnel, Inc. v. Industrial Comm'n. of Ohio*, 10th Dist. App. No. 03AP-246, 2003-Ohio-7030; *Holland v. Holland* (Jan. 20, 1998), 10th Dist. App. No. 97APF08-974, 1998 WL 30179; *In re Gibbs* (Mar. 13, 1998), 11th Dist. App. No. 97-L-067, 1998 WL 257317.

Only one court of appeals appears consistently and knowingly to have taken a different approach. *Lowery v. Keystone Bd. of Ed.* (May 9, 2001), 9th Dist. App. No. 99CA007407, 2001 WL 490017; *Weber v. Weber* (June 30, 1999), 9th Dist. App. No. 2846-M, 1999 WL 459359; *Meadows v. Meadows* (Feb. 11, 1998), 9th Dist. App. No. 18382, 1998 WL 78686; *Rogers v. Rogers* (Dec. 17, 1997), 9th Dist. App. No. 18280, 1997 WL 795820.

The Rules Advisory Committee believes that the view adopted by the majority of courts of appeals is correct and that no change was made by the 1995 amendments to Crim. R. 19 in the review required of a trial judge upon the filing of timely objections to a magistrate's decision.

The phrase "as to the objected matters" permits a court to choose to limit its independent review to those matters raised by proper objections. If a court need apply only the "defect evident on the face" standard if no objections are filed at all, then, if one or more objections *are* filed, a court logically need apply the more stringent independent review only to those aspects of the magistrate's decision that are challenged by that objection or those objections.

Sentence three of Crim. R. 19(D)(4)(d) provides that, before ruling on objections, a court may hear additional evidence and that it may refuse to hear additional evidence unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.

Crim. R. 19(D)(4)(e) requires that a court that adopts, rejects, or modifies a magistrate's decision also enter a judgment or interim order. Crim. R. 19(D)(4)(e)(i) permits the court to enter a judgment during the fourteen days permitted for the filing of objections to a magistrate's decision but provides that the timely filing of objections operates as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered. Crim. R. 19(D)(4)(e)(ii) permits the court, if immediate relief is justified, to enter an interim order based on the

magistrate's decision without waiting for or ruling on timely objections. The timely filing of objections does not stay such an interim order, but the order may not properly extend more than twenty-eight days from the date of entry, subject to extension by the court in increments of twenty-eight additional days for good cause shown. New sentence three of Crim. R. 19(D)(4)(e)(ii) provides that an interim order shall comply with Civ. R. 54(A), be journalized pursuant to Civ. R. 58(A), and be served pursuant to Civ. R. 58(B). See *Hall v. Darr,* 6th Dist. App. No. OT-03-001, 2003-Ohio-1035.

Extension of time

Crim. R. 19(D)(5) is new and requires the court, for good cause shown, to provide an objecting party with a reasonable extension of time to file a motion to set aside a magistrate's order or file objections to a magistrate's decision. "Good cause" would include the failure of a party to receive timely service of the magistrate's order or decision.

Disqualification of a magistrate

Crim. R. 19(D)(6) has no counterpart in former Crim. R. 19. The statutory procedures for affidavits of disqualification apply to judges rather than magistrates. Rev. Code §§ 2101.39, 2501.13, 2701.03, 2701.131; *In re Disqualification of Light* (1988), 36 Ohio St.3d 604, 522 N.E.2d 458. The new provision is based on the observation of the Chief Justice of the Supreme Court that "[t]he removal of a magistrate is within the discretion of the judge who referred the matter to the magistrate and should be brought by a motion filed with the trial court." *In re Disqualification of Wilson* (1996), 77 Ohio St. 3d 1250, 1251, 674 N.E.2d 260; see also *Mascorro v. Mascorro* (June 9, 2000), 2nd Dist. App. No. 17945, 2000 WL 731751 at *3 (citing *In re Disqualification of Wilson)*; *Reece v. Reece* (June 22, 1994), 2nd Dist. App. No. 93-CA-45, 1994 WL 286282 at *2 ("Appointment of a referee is no different from any other process in which the trial court exercises discretion it is granted by statute or rule. * * * If the defect concerns possible bias or prejudice on the part of the referee, that may be brought to the attention of the court by motion."); *Moton v. Ford Motor Credit Co.*, 5th Dist. App. No. 01CA74, 2002-Ohio-2857, appeal not allowed (2002), 95 Ohio St.3d 1422, 2002-Ohio-1734, 766 N.E.2d 163, reconsideration denied (2002), 95 Ohio St.3d 1476, 2002-Ohio-244, 768 N.E.2d 1183; *Walser v. Dominion Homes, Inc.* (June 11, 2001), 5th Dist. App. No. 00-CA-G-11-035, 2001 WL 704408 at *5; *Unger v. Unger* (Dec. 29, 2000), 12th Dist. App. No. CA2000-04-009, 2000 WL 1902196 at *2 (citing *In re Disqualification of Wilson*, *supra)*; *Jordan v. Jordan* (Nov. 15, 1996), 4th Dist. App. No. 1427, 1990 WL 178162 at *5 ("Although referees are not judges and arguably, are not bound by Canon 3(C)(1) of the Code of Judicial Conduct, it would appear axiomatic that a party should be able to petition the court to have a referee removed from the case if the referee is unable to render a fair and impartial decision."); *In re Reiner* (1991), 74 Ohio App.3d 213, 220, 598 N.E.2d 768 ("where a referee affirmatively states that he is biased on the matter before him, it is an abuse of the court's discretion to fail to recuse the referee"). Particularly because "a [magistrate's] oversight of an issue or issues, or even an entire trial, is not a *substitute* for the judicial functions but only an *aid* to them," *Hartt v. Munobe* (1993), 67 Ohio St.3d 3, 6, 1993-Ohio-177, 615 N.E.2d 617 (emphases added), Crim. R. 19(D)(6) contemplates that disqualification on a ground other than bias may sometimes be appropriate.

Recording of proceedings before a magistrate

Crim. R. 19(D)(7), generally requiring recording of proceedings before a magistrate, is taken verbatim from former Crim. R. 19(D)(2).

Contempt in the presence of a magistrate

Crim. R. 19(D)(8) is adapted from sentences two, three, and four of former Crim. R. 19(C)(5)(c). Crim. R. 19(D)(8)(b), unlike its predecessor, explicitly requires that the clerk provide a copy of a contempt order to the subject of the order.

Staff Note (July 1, 2000 Amendment)

Rule 19 Magistrates
Rule 19(A) Appointment

This division was amended by deleting the reference to compensation and moving it to a new division (B) of the rule. The amendment also deleted the reference to "traffic referee" consistent with the 1996 amendment of Rule 14 of the Ohio Traffic Rules. The inconsistency in the rules between the titles of "magistrate" and "referee" has been eliminated.

Rule 19(B) Compensation

This entirely new division (B) restates the existing rule that the compensation of a magistrate shall be set by the court, adds new language that is consistent with Civ. R. 53 and Juv. R. 40, and states that no part of the compensation of a magistrate shall be taxed as costs.

Rule 19(C) Reference and powers
Rule 19(C)(1) Order of reference

This division of the rule was revised substantially to expand the authority of magistrates in the criminal areas beyond arraignment and preliminary, non-dispositive matters. This division incorporates all the powers and duties set out in division (B)(1) of the prior rule, with the exception of motion practice pursuant to Crim. R. 47, the authority to compel witnesses and the magistrate's duty to issue orders in writing. A new division (C)(1)(f) expands the authority of magistrates to hear motions in misdemeanor cases, subject to the unanimous consent of the parties if imprisonment is a possible penalty. The authority to compel witnesses has been moved to a new division (C)(4) that sets out a magistrate's general powers. The requirement that a magistrate's order be in writing and in the record has been moved to new division (C)(5)(e). [See staff note for Rule 19(C)(5)(e) below.]

This new division (C) further expands the authority of magistrates in misdemeanor cases to accept guilty and no contest pleas, hear non-jury contested cases with the consent of all parties if imprisonment is a possible penalty, recommend sentences, and issue temporary protection orders. The authority of the magistrates in felony cases has not been expanded beyond that which exists under the current rule. Although magistrates have the authority to preside over jury trials, see *Hartt v. Munobe* (1993), 67 Ohio St. 3d 3, and Civ. R. 53 and Juv. R. 40, the rule expressly limits a magistrate's authority to preside over criminal trials to non-jury misdemeanor cases.

Rule 19(C)(2)

This new division tracks the language of Civ. R. 53(C)(1)(b) and Juv. R. 40(C)(1)(b) and makes it clear that magistrates have authority to act only on matters referred to them by a judge in an order of reference pursuant to division (C)(1), but permits an order of reference to be categorical or specific to a particular case or motion in a case.

Rule 19(C)(3)

This new division tracks language of Civ. R. 53(C)(1)(c) and Juv. R. 40 (C)(1)(c) and makes it clear that a particular judge in a given order of reference may limit the powers generally provided in this rule for magistrates.

Rule 19(C)(4) General powers

This new division substantially tracks the language of Civ. R. 53(C)(2) and Juv. R. 40(C)(2) and outlines the general powers of magistrates to regulate proceedings as if by the court, including the power to issue an order of attachment and set bail in cases involving direct or indirect contempt.

Rule 19(C)(5) Power to enter orders

Division (C)(5)(a) retained the essence of the prior rule which permits magistrates, in certain specifically identified proceedings, to enter orders that are effective without judicial approval. The amendment expands the number of proceedings in which a magistrate might issue such an order by describing the order in more general terms rather than specifically identifying the nature of each order. [See Civ. R. 53(C)(3)(a) and Juv. R. 40(C)(3)(a).] A magistrate may issue an order pursuant to division (C)(5)(a) only if it is a pretrial order necessary to regulate the proceedings, is temporary in nature and is not dispositive of a claim or defense of a party. The following are examples of the types of proceedings in which a magistrate might issue an order that would become effective without judicial approval: 1) proceedings described in division (C)(1) of this rule; 2) motions to amend the complaint pursuant to Crim. R. 7; 3) pretrial discovery proceedings under Crim. R. 15 and Crim. R. 16; 4) assignment of counsel under Crim. R. 44; and 5) requests for continuances.

Division (C)(5)(b) is consistent with the prior rule that permitted an appeal of a magistrate's order, but was amended in several ways. The mechanism for an appeal of the magistrate's order is no longer an objection but a motion to set aside the order, a procedure consistent with the current practice under Civ. R. 53(C)(3)(b) and Juv. R. 40(C)(3)(b). The amendment also extended the time within which an appeal of the order might be filed from seven to fourteen days and clarified that the order remains effective unless a stay is granted. Finally, although the better practice is to file a timely motion to set aside, if a party fails to appeal an order under this division, the order may still be reviewed by a judge in a later objection to a subsequent magistrate's decision.

Rule 19(C)(5)(c) Contempt in the magistrate's presence

Division (C)(5)(c), Contempt in the magistrate's presence, codified the inherent power of magistrates, as judicial officers, to deal with contempt of court that occurs in their actual presence. This authority is consistent with that granted to magistrates in Civ. R. 53(C)(3)(c) and Juv. R. 40(C)(3)(c).

Rule 19(C)(5)(d) Powers conveyed by statute

Division (C)(5)(d), a new division, makes it clear that nothing in this rule is intended to override those statutes that have expressly conferred authority on referees and magistrates.

Rule 19(C)(5)(e) Form of magistrate's orders

Division (C)(5)(e), a new division, tracks the language of Civ. R. 53(C)(3)(e) and Juv. R. 40(C)(3)(e) and clarifies the form in which magistrate's orders are to be prepared so that they will be easily identified as such by parties and on the dockets.

Rule 19(D) Proceedings

This entirely new division emphasizes that proceedings before a magistrate should be conducted in the same manner as if by the court and shall be recorded in accordance with procedures established by the court. Language identical to Civ. R. 53(D) and substantially similar to that in Juv. R. 40 was included.

Rule 19(E) Decisions in referred matters

This entirely new division of the rule incorporates the procedures for the issuance and judicial review of magistrates' decisions that have been applied in civil and juvenile cases since 1995. Although criminal matters present special constitutional and procedural issues when a magistrate is involved in such matters, the familiar procedures outlined in Civ. R. 53(E) and Juv. R. 40(E) provide a reliable framework for judicial review.

Rule 19(E)(1) Magistrate's decision

The language of this division tracks that in Civ. R. 53(E)(1) but contains an additional requirement that the decision be captioned as a magistrate's decision in order to distinguish it from a magistrate's order issued under division (C)(5) of the rule.

Rule 19(E)(2) Objections

The language of this division tracks that of Civ. R. 53(E)(2) except that the period of time within which a party may respond to the filing of an objection has been reduced from fourteen days to seven days in consideration of the shorter period of time in which courts must dispose of misdemeanor cases.

Rule 19(E)(3) Court's action on magistrate's decision
Rule 19(E)(3)(a) When effective

This new division of the rule contains language similar to Civ. R. 53(E)(4)(a) and Juv. R. 40(E)(4)(a) but departs from that language in a significant way. Because a magistrate's decision in a criminal case may include a sentence of imprisonment, the rule permits a court to enter judgment on a magistrate's decision only after the period for objections has expired or all parties have waived the right to file an objection. Finally, the new division underscores the rule that no sentence based upon a magistrate's decision shall be enforced until it has been adopted by the court and judgment has been entered.

Rule 19(E)(3)(b) Disposition of Objections

The language in this new division is identical to Civ. R. 53(E)(4)(b) and Juv. R. 40(E)(4)(b).

RULE 20. [RESERVED]

RULE 21. Transfer From Common Pleas Court for Trial.

(A) When permitted. Where an indictment or information charging only misdemeanors is filed in the court of common pleas, the court may retain the case for trial or the administrative judge, within fourteen days after the indictment or information is filed with the clerk of the court of common pleas, may transfer it to the court from which the bind over to the grand jury was made or to the court of record of the jurisdiction in which venue appears.

(B) Proceedings on transfer. When a transfer is ordered, the clerk of the court of common pleas, within three days, shall transmit to the clerk of the court to which the case is transferred, certified copies of the indictment, information, and all other papers in the case, and any bail taken, and the prosecution shall continue in that court.

[Effective: July 1, 1973; amended effective July 1, 2004.]

Staff Note (July 1, 2004 Amendment)

Rule 21 Transfer from common pleas court for trial.

Criminal Rule 21(B) was revised to mandate that the clerk for the court of common pleas transmit certified copies of indictments, information and all other papers in the case within three days after the transfer has been ordered. The purpose for the revision is to ensure the timely transfer of this information so that there is no delay in the prosecution of the case.

RULE 22. Recording of Proceedings.

In serious offense cases all proceedings shall be recorded.

In petty offense cases all waivers of counsel required by Rule 44(B) shall be recorded, and if requested by any party all proceedings shall be recorded.

Proceedings may be recorded in shorthand, or stenotype, or by any other adequate mechanical, electronic or video recording device.

[Effective: July 1, 1973.]

RULE 23. Trial by Jury or by the Court.

(A) Trial by jury. In serious offense cases the defendant before commencement of the trial may knowingly, intelligently and voluntarily waive in writing his right to trial by jury. Such waiver may also be made during trial with the approval of the court and the consent of the prosecuting attorney. In petty offense cases, where there is a right of jury trial, the defendant shall be tried by the court unless he demands a jury trial. Such demand must be in writing and filed with the clerk of court not less than ten days prior to the date set for trial, or on or before the third day following receipt of notice of the date set for trial, whichever is later. Failure to demand a jury trial as provided in this subdivision is a complete waiver of the right thereto.

(B) Number of jurors.

In felony cases juries shall consist of twelve.

In misdemeanor cases juries shall consist of eight.

If a defendant is charged with a felony and with a misdemeanor or, if a felony and a misdemeanor involving different defendants are joined for trial, the jury shall consist of twelve.

(C) Trial without a jury. In a case tried without a jury the court shall make a general finding.

[Effective: July 1, 1973; amended effective July 1, 1980.]

RULE 24. Trial Jurors.

(A) Brief introduction of case. To assist prospective jurors in understanding the general nature of the case, the court, in consultation with the parties, may give jurors a brief introduction to the case.

(B) Examination of prospective jurors. Any person called as a prospective juror for the trial of any cause shall be examined under oath or upon affirmation as to the prospective juror's qualifications. The court may permit the attorney for the defendant, or the defendant if appearing *pro se*, and the attorney for the state to conduct the examination of the prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the state and defense to supplement the examination by further inquiry. Nothing in this rule shall limit the court's discretion, with timely notice to the parties at any time prior to trial, to allow the examination of all prospective jurors in the array or, in the alternative, to permit individual examination or each prospective juror seated on a panel, prior to any challenges for cause or peremptory challenges.

(C) Challenge for cause. A person called as a juror may be challenged for the following causes:

(1) That the juror has been convicted of a crime which by law renders the juror disqualified to serve on a jury.

(2) That the juror is a chronic alcoholic, or drug dependent person.

(3) That the juror was a member of the grand jury that found the indictment in the case.

(4) That the juror served on a petit jury drawn in the same cause against the same defendant, and the petit jury was discharged after hearing the evidence or rendering a verdict on the evidence that was set aside.

(5) That the juror served as a juror in a civil case brought against the defendant for the same act.

(6) That the juror has an action pending between him or her and the State of Ohio or the defendant.

(7) That the juror or the juror's spouse is a party to another action then pending in any court in which an attorney in the cause then on trial is an attorney, either for or against the juror.

(8) That the juror has been subpoenaed in good faith as a witness in the case.

(9) That the juror is possessed of a state of mind evincing enmity or bias toward the defendant or the state; but no person summoned as a juror shall be disqualified by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused, if the court is satisfied, from the examination of the juror or from other evidence, that the juror will render an impartial verdict according to the law and the evidence submitted to the jury at the trial.

(10) That the juror is related by consanguinity or affinity within the fifth degree to the person alleged to be injured or attempted to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted; or to the defendant.

(11) That the juror is the person alleged to be injured or attempted to be injured by the offense charged, or the person on whose complaint the prosecution was instituted, or the defendant.

(12) That the juror is the employer or employee, or the spouse, parent, son, or daughter of the employer or employee, or the counselor, agent, or attorney, of any person included in division (C)(11) of this rule.

(13) That English is not the juror's native language, and the juror's knowledge of English is insufficient to permit the juror to understand the facts and the law in the case.

(14) That the juror is otherwise unsuitable for any other cause to serve as a juror.

The validity of each challenge listed in division (C) of this rule shall be determined by the court.

(D) Peremptory challenges. In addition to challenges provided in division (C) of this rule, if there is one defendant, each party peremptorily may challenge three prospective jurors in misdemeanor cases, four prospective jurors in felony cases other than capital cases, and six prospective jurors in capital cases. If there is more than one defendant, each defendant peremptorily may challenge the same number of prospective jurors as if the defendant was the sole defendant.

In any case where there are multiple defendants, the prosecuting attorney peremptorily may challenge a number of prospective jurors equal to the total peremptory challenges allowed all defendants. In case of the consolidation of any indictments, informations, or complaints for trial, the consolidated cases shall be considered, for purposes of exercising peremptory challenges, as though the defendants or offenses had been joined in the same indictment, information, or complaint.

(E) Manner of exercising peremptory challenges. Peremptory challenges shall be exercised alternately, with the first challenge exercised by the state. The failure of a party to exercise a peremptory challenge constitutes a waiver of that challenge, but does not constitute a waiver of any subsequent challenge. However, if all parties, alternately and in sequence, fail to exercise a peremptory challenge, the joint failure constitutes a waiver of all peremptory challenges.

A prospective juror peremptorily challenged by either party shall be excused.

Nothing in this rule shall limit the court's discretion to allow challenges under this division or division (D) of this rule to be made outside the hearing of prospective jurors.

(F) Challenge to array. The prosecuting attorney or the attorney for the defendant may challenge the array of petit jurors on the ground that it was not selected, drawn or summoned in accordance with law. A challenge to the array shall be made before the examination of the jurors pursuant to division (B) of this rule and shall be tried by the court.

No array of petit jurors shall be set aside, nor shall any verdict in any case be set aside because the jury commissioners have returned such jury or any juror in any informal or irregular manner, if in the opinion of the court the irregularity is unimportant and insufficient to vitiate the return.

(G) Alternate jurors.

(1) Non-capital cases. The court may direct that not more than six jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, have the same qualifications, be subject to the same examination and challenges, take the same oath, and have the same functions, powers, facilities, and privileges as the regular jurors**.** The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew. Each party is entitled to one peremptory challenge in addition to those otherwise allowed if one or two alternate jurors are to be impaneled, two peremptory challenges if three or four alternate jurors are to be impaneled, and three peremptory challenges if five or six alternative jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by this rule may not be used against an alternate juror.

(2) Capital cases. The procedure designated in division (G)(1) of this rule shall be the same in capital cases, except that any alternate juror shall continue to serve if more than one deliberation is required. If an alternate juror replaces a regular juror after a guilty verdict, the court shall instruct the alternate juror that the juror is bound by that verdict.

(H) Control of juries.

(1) Before submission of case to jury. Before submission of a case to the jury, the court, upon its own motion or the motion of a party, may restrict the separation of jurors or may sequester the jury.

(2) After submission of case to jury.

(a) Misdemeanor cases. After submission of a misdemeanor case to the jury, the court, after giving cautionary instructions, may permit the separation of jurors.

(b) Non-capital felony cases. After submission of a non-capital felony case to the jury, the court, after giving cautionary instructions, may permit the separation of jurors during any

period of court adjournment or may require the jury to remain under the supervision of an officer of the court.

(c) Capital cases. After submission of a capital case to the jury, the jury shall remain under the supervision of an officer of the court until a verdict is rendered or the jury is discharged by the court.

(3) Separation in emergency. Where the jury is sequestered or after a capital case is submitted to the jury, the court may, in an emergency and upon giving cautionary instruction, allow temporary separation of jurors.

(4) Duties of supervising officer. Where jurors are required to remain under the supervision of an officer of the court, the court shall make arrangements for their care, maintenance and comfort.

When the jury is in the care of an officer of the court and until the jury is discharged by the court, the officer may inquire whether the jury has reached a verdict, but shall not:

(a) Communicate any matter concerning jury conduct to anyone except the judge or;

(b) Communicate with the jurors or permit communications with jurors, except as allowed by court order.

(I) Taking of notes by jurors. The court, after providing appropriate cautionary instructions, may permit jurors who wish to do so to take notes during a trial. If the court permits the taking of notes, notes taken by juror may be carried into deliberations by that juror. The court shall require that all juror notes be collected and destroyed promptly after the jury renders a verdict.

(J) Juror questions to witnesses. The court may permit jurors to propose questions for the court to ask of the witnesses. If the court permits jurors to propose questions, the court shall use procedures that minimize the risk of prejudice, including all of the following:

(1) Require jurors to propose any questions to the court in writing;

(2) Retain a copy of each proposed question for the record;

(3) Instruct the jurors that they shall not display or discuss a proposed question with other jurors;

(4) Before reading a question to a witness, provide counsel with an opportunity to object to each question on the record and outside the hearing of the jury;

(5) Read the question, either as proposed or rephrased, to the witness;

(6) Permit counsel to reexamine the witness regarding a matter addressed by a juror question;

(7) If a question proposed by a juror is not asked, instruct the jurors that they should not draw any adverse inference form the court's refusal to ask any question proposed by a juror.

[Effective: July 1, 1973; amended effective July 1, 1975; July 1, 2002; July 1, 2005; July 1, 2006; amended July 1, 2008; July 1, 2009.]

Staff Note (July 1, 2009 Amendments)

Prior to 2006, Crim. R. 24 appeared to require judges to empanel a prospective jury and examine each one individually, a process referred to as the "strike and replace" method. In 2006, Crim. R. 24 was amended with the intent to clarify that examination of prospective jurors in an array (sometimes referred to as the "struck" method of juror examination) was also permitted. Crim. R. 24(E) however, which was not changed in 2006, retained language that arguably applied only to examination of jurors seated on a panel. The 2009 amendments add language to Crim. R. 24(E) and delete language from Crim. R. 24(E) to further clarify that prospective jurors may be examined either in the array or after being seated on a panel.

Staff Note (July 1, 2008 Amendment)

Criminal Rule 24 is amended in order to give trial judges the option of retaining alternate jurors during the deliberation process in non-capital cases. The judge would have the option of retaining the alternate or alternates who would be sequestered from the rest of the jurors during deliberation, and if one of the regular jurors is unable to continue deliberations, to replace the juror with the alternate and instruct the jury to begin its deliberations anew.

The proposed amendments do not change the requirement in the current rule that alternate jurors be retained during the guilt phase of capital case deliberations. Under former Crim. R. 24, however, an alternate juror could not substitute for a juror unable to continue during deliberations. The proposed amendments allow trial judges in capital cases, as well as non-capital cases, the option of retaining alternates during any deliberations and substituting an alternate in the middle of deliberation.

Staff Note (July 1, 2006 Amendment)

Crim. R. 24 is amended to recognize the existence of alternative methods of jury selection and expressly permit the use of these methods in Ohio courts. The amendments are consistent with recommendations contained in the February 2004 *Report and Recommendations of the Supreme Court of Ohio Task Force on Jury Service*, at pp. 10-11.

The Task Force on Jury Service identified two primary methods of jury selection and encouraged the use of a selection process that is efficient and enhances juror satisfaction. The Rules Advisory Committee learned that some judges and lawyers believe that the pre-2006 version of Crim. R. 24 precluded the use of a selection method, commonly referred to as the "struck" method, whereby prospective jurors are examined as a group and then the trial judge and attorneys meet privately to challenge jurors for cause and exercise peremptory challenges. Two amendments to Crim. R. 24 are added to expressly permit alternative selection methods. Crim. R. 24(C), (F), and (G) also are revised to correct erroneous cross-references resulting from the 2005 amendments to the rule.

Rule 24(B) Examination of prospective jurors

The last sentence of Crim. R. 24(B) is added to expressly permit the examination of prospective jurors in an array. The rule differs slightly from the corresponding provision in Civ. R. 47 by requiring that the court provide the parties with timely notice, at any time prior to trial, of the intent to conduct an

examination of prospective jurors in an array. The Rules Advisory Committee is of the opinion that pretrial notice to the parties in criminal cases is necessary to comport with constitutional requirements.

Rule 24(E) Manner of exercising peremptory challenges

The last sentence of Civ. R. 24(E) is added to expressly afford the trial court the discretion to allow the exercise of challenges for cause and peremptory challenges outside the hearing of the jury.

Staff Note (July 1, 2005 Amendment)

Crim. R. 24 is amended to reflect four recommendations of the Task Force on Jury Service. See *Report and Recommendations of the Supreme Court of Ohio Task Force on Jury Service* (February 2004).

Rule 24(A) Brief introduction of case

A new Crim. R. 24(A) is added to permit the trial judge, prior to jury selection, to provide a brief introduction to the case to persons called as prospective jurors. See *Report and Recommendations*, *supra*, at 1 (recommending "a brief statement of the case by the court or counsel prior to the beginning of voir dire" and inclusion of "the legal claims and defenses of the parties' in the list of instructions the court may give at the commencement of trial"). The Rules Advisory Committee shares the views of the Task Force that the preliminary statement may "help the jury selection process run smoothly" and "increase the satisfaction of jurors." *Report and Recommendations*, *supra*, at 9. The preliminary statement is intended to help prospective jurors to understand why certain questions are asked during voir dire, recognize personal bias, and give candid responses to questions during voir dire.

The Committee recognizes that there may be instances in which the brief introduction is unnecessary; thus the rule vests discretion with the trial judge as to whether an introduction will be provided in a particular case. The rule also requires the trial judge to consult with the parties as to whether to provide the introduction and the content of the introduction. The consultation is required in recognition that the parties can aid the trial judge in determining whether a statement is necessary and developing the content of the statement.

Unlike its counterpart in the Civil Rules [Civ. R. 47(A)], Crim. R. 24(A) does not contain language indicating that "[t]he brief introduction may include a general description of the legal claims and defenses of the parties." The Committee recommends this distinction given the unique nature of criminal cases. For example, if the statement given prior to voir dire referred to a potential claim of an alibi, the jury could draw an inappropriate inference from the defendant's subsequent decision to not offer any evidence of an alibi. For this reason, the Committee believes the opening statement in criminal cases should be more limited in scope.

Former divisions (A) through (G) of Crim. R. 24 are relettered to reflect the addition of new division (A).

Rule 24(E) Manner of exercising peremptory challenges

New Crim. R. 24(E) (formerly Crim. R. 24(D)) is amended to make two related principles regarding peremptory challenges more clear. One principle is that failure of a party to exercise a given peremptory challenge waives that challenge but does not waive any other peremptory challenges to which the party may otherwise be entitled.

The other principle is that consecutive passes by all parties or sides waives all remaining peremptory challenges. The Task Force concluded that, contrary to the language and intent of former Crim. R. 24(D), "often courts and attorneys will assume that once a peremptory challenge is waived all remaining peremptory challenges are waived." *Report and Recommendations*, *supra*, at 22. The amended language is designed to deter the incorrect assumption perceived by the Task Force.

Rule 24(I) Taking of notes by jurors

A new Crim. R. 24(I) is added to explicitly authorize trial courts, after providing appropriate cautionary instructions, to permit jurors who wish to do so to take notes during trial and to take notes into deliberations. The Rules Advisory Committee agrees with the Task Force that allowing jurors to take notes potentially promotes the fact-finding process and aids juror comprehension and recollection.

The reference in sentence one of new division (I) to "appropriate cautionary instructions" reflects the apparent requirements of *State v. Waddell*, 75 Ohio St.3d 163 (1996), which held that "[a] trial court has the discretion to permit or prohibit note-taking by jurors," *Waddell*, 75 Ohio St.3d at 163 (syl. 1), and explained that "[i]f a trial court determines that a particular case warrants note-taking, the court can, *sua sponte*, furnish jurors with materials for taking notes and instruct the jurors that they are permitted to take notes during the trial." *Id.* at 170. The *Waddell* opinion appears to condition the permitting of note-taking on the giving of instructions to jurors that (1) "they are not required to take notes;" *id.* (syl. 2), (2) "their notes are to be confidential;" (3) "note-taking should not divert their attention from hearing the evidence in the case;" (4) "a juror who has not taken notes should not be influenced by those jurors who decided to take notes;" and (5) "notes taken by jurors are to be used solely as memory aids and should not be allowed to take precedence over their independent memory of facts." *Id.* (syl. 3); see also *State v. Blackburn*, 1996 WL 570869 at *3 and n.1, No. 93 CA 10 (5th Dist. Ct. App., Fairfield, 9-26-96) (finding no plain error in the trial court's decision to permit juror note-taking despite lack of instruction on items (3) through (5) but noting that "in the future, it would be better practice for trial courts to instruct and caution the jury as suggested by the Ohio Supreme Court in *Waddell*"); *cf.* 1 Ohio Jury Instructions 2.52, § 1 ("Note-taking Prohibited") and § 2 ("Note-taking Permitted") (2002). The Task Force noted that many of the judges who participated in the pilot project that it sponsored "instructed jurors to make notes only when there was a break in the testimony (e.g., while judge and attorneys are busy at sidebar)." *Report and Recommendations*, *supra*, at 14.

Sentence two of new division (I) explicitly authorizes a practice perhaps only implicitly approved in *Waddell*, i.e., the carrying into deliberations by a juror of any notes taken pursuant to permission of the court. See Markus, *Trial Handbook for Ohio Lawyers* § 37:6 (2003) (citing *Waddell* for the proposition that "[w]hen the court permits the jurors to take notes during the trial, it may allow the jurors to retain those notes during their deliberations").

The requirement of sentence three of new division (I) that the court require that all juror notes be collected and destroyed promptly after verdict reflects in part the *Waddell* prescription that "notes are to be confidential." *See also State v. Williams*, 80 Ohio App.3d 648, 654 (1992) (cited with apparent approval by the Court in *Waddell* and rejecting the argument that notes taken by jurors should have been preserved for review rather than destroyed).

Rule 24(J) Juror questions to witnesses

A new Crim. R. 24(J) is added to set forth a procedure to be followed if the trial court permits jurors to propose questions to be asked of witnesses during trial. See *Report and Recommendations*, *supra*, at 15-16 and *State v. Fisher* 99 Ohio St.3d 127, 2003-Ohio-2761. The rule incorporates the holding of the Supreme Court in *State v. Fisher, supra*, by stating that the practice of allowing jurors to propose questions to witnesses is discretionary with the trial judge, and codifies procedures that have been sanctioned by the Supreme Court in *Fisher*. See *State v. Fisher* 99 Ohio St.3d at 135. In addition to the procedures outlined in *Fisher*, the rule provides that the court must retain a copy of all written questions proposed by the jury for the record and that the court may rephrase any question proposed by the jury before posing it to a witness. These added procedures ensure the existence of a proper record, should an issue regarding juror questions be raised on appeal, and recognize that a question proposed by a juror may need to be rephrased for clarity, admissibility, or other reason appropriate under the circumstances.

The amendments to Crim. R. 24 also include nonsubstantive changes that include gender-neutral language and uniform usage of the term "prospective juror."

Staff Note (July 1, 2002 Amendment)

Criminal Rule 24 Trial Jurors
Criminal Rule 24(A), (B), (C), (D), and (E)

Throughout divisions (A) – (E), masculine references were changed to gender-neutral language, the style used for rule references was changed, and other grammatical changes were made. No substantive amendment to any of these divisions was intended.

Criminal Rule 24 (F) Alternate jurors

The amendment effective July 1, 2002 divided division F of the previous rule into divisions (F)(1) and (F)(2). Division (F)(1) [Non-capital cases] contains the substance of previous division (F), plus the inclusion of an exception for capital cases. Division (F)(2) [Capital cases] was added to permit alternate jurors in capital murder cases to continue to sit as alternate jurors after a guilty verdict has been rendered. If an alternate juror replaces a regular juror for the penalty phase of the trial, the trial judge shall instruct the alternate juror that the alternate juror is bound by the guilty verdict.

RULE 25. Disability of a Judge.

(A) During trial. If for any reason the judge before whom a jury trial has commenced is unable to proceed with the trial, another judge designated by the administrative judge, or, in the case of a single-judge division, by the Chief Justice of the Supreme Court of Ohio, may proceed with and finish the trial, upon certifying in the record that he has familiarized himself with the record of the trial. If such other judge is satisfied that he cannot adequately familiarize himself with the record, he may in his discretion grant a new trial.

(B) After verdict or finding of guilt. If for any reason the judge before whom the defendant has been tried is unable to perform the duties of the court after a verdict or finding of guilt, another judge designated by the administrative judge, or, in the case of a single-judge division, by the Chief Justice of the Supreme Court of Ohio, may perform those duties. If such other judge is satisfied that he cannot perform those duties because he did not preside at the trial, he may in his discretion grant a new trial.

[Effective: July 1, 1973.]

RULE 26. Substitution of Photographs for Physical Evidence.

Physical property, other than contraband, as defined by statute, under the control of a Prosecuting Attorney for use as evidence in a hearing or trial should be returned to the owner at the earliest possible time. To facilitate the early return of such property, where appropriate, and by court order, photographs, as defined in Evid. R. 1001(2), may be taken of the property and introduced as evidence in the hearing or trial. The admission of such photographs is subject to the relevancy requirements of Evid. R. 401, Evid. R. 402, Evid. R. 403, the authentication requirements of Evid. R. 901, and the best evidence requirements of Evid. R. 1002.

[Adopted effective July 1, 1981.]

RULE 27. Proof of Official Record; Judicial Notice: Determination of Foreign Law.

The proof of official records provisions of Civil Rule 44, and the judicial notice and determination of foreign law provisions of Civil Rule 44.1 apply in criminal cases.

[Effective: July 1, 1973.]

RULE 28. [RESERVED]

RULE 29. Motion for Acquittal.

(A) Motion for judgment of acquittal. The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state's case.

(B) Reservation of decision on motion. If a motion for a judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict, or after it returns a verdict of guilty, or after it is discharged without having returned a verdict.

(C) Motion after verdict or discharge of jury. If a jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within fourteen days after the jury is discharged or within such further time as the court may fix during the fourteen day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal. If the evidence shows the defendant is not guilty of the degree of crime for which the defendant was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the verdict or finding accordingly and shall pass sentence on such verdict or finding as modified. If no verdict is returned, the court may enter judgment of acquittal. It shall not be a prerequisite to the making of such motion that a similar motion has been made prior to the submission of the case to the jury.

[Effective: July 1, 1973; amended effective July 1, 2022.]

RULE 30. Instructions.

(A) Instructions; error; record. At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. Copies shall be furnished to all other parties at the time of making the requests. The court shall inform counsel of its proposed action on the requests prior to counsel's arguments to the jury and shall give the jury complete instructions after the arguments are completed. The court also may give some or all of its instructions to the jury prior to counsel's arguments. The court shall reduce its final instructions to writing or make an audio, electronic, or other recording of those instructions, provide at least one written copy or recording of those instructions to the jury for use during deliberations, and preserve those instructions for the record.

On appeal, a party may not assign as error the giving or the failure to give any instructions unless the party objects before the jury retires to consider its verdict, stating specifically the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(B) Cautionary instructions. At the commencement and during the course of the trial, the court may give the jury cautionary and other instructions of law relating to trial procedure, credibility and weight of the evidence, and the duty and function of the jury and may acquaint the jury generally with the nature of the case.

[Effective: July 1, 1973; amended effective July 1, 1975; July 1, 1982; July 1, 1992; July 1, 2005.]

Staff Note (July 1, 2005 Amendments)

Rule 30(A) Instructions; error; record

Crim. R. 30 is amended to reflect a recommendation of the Task Force on Jury Service. See *Report and Recommendations of the Supreme Court of Ohio Task Force on Jury Service* at 1 and 12-13 (February 2004). The amendment mandates practices that trial courts have frequently chosen to adopt in particular criminal actions: (1) reducing final jury instructions to writing or making an audio, electronic, or other recording of those instructions; (2) providing at least one written copy or recording of those instructions to the jury for use during deliberations; and (3) preserving those instructions for the record.

The practices mandated by the amendment are intended to increase juror comprehension of jury instructions, reduce juror questions of the court during deliberations, and help juries structure their deliberations. The Task Force recommended that "each individual juror be given a copy of written instructions but, in the event of budgetary constraints, one copy of written instructions be provided to the jury to use during the deliberation process." *Report and Recommendations*, *supra*, at 13.

RULE 31. Verdict.

(A) Return. The verdict shall be unanimous. It shall be in writing, signed by all jurors concurring therein, and returned by the jury to the judge in open court.

(B) Several defendants. If there are two or more defendants the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(C) Conviction of lesser offense. The defendant may be found not guilty of the offense charged but guilty of an attempt to commit it if such an attempt is an offense at law. When the indictment, information, or complaint charges an offense including degrees, or if lesser offenses are included within the offense charged, the defendant may be found not guilty of the degree charged but guilty of an inferior degree thereof, or of a lesser included offense.

(D) Poll of jury. When a verdict is returned and before it is accepted the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.

[Effective: July 1, 1973.]

Staff Note (July 1, 2021)

Rule 31 Unanimous Verdict

While the rule in Ohio has been that a verdict in a criminal case must be unanimous pursuant to Crim R 31(A), it has become law across the United States. The United States Supreme Court ruled that a criminal jury verdict must be unanimous in *Ramos v. Louisiana,* 140 S. Ct. 1390 (2020), 2020 U.S. LEXIS 2407.

RULE 32. Sentence.

(A) Imposition of sentence. Sentence shall be imposed without unnecessary delay. Pending sentence, the court may commit the defendant or continue or alter the bail. At the time of imposing sentence, the court shall do all of the following:

(1) Afford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.

(2) Afford the prosecuting attorney an opportunity to speak;

(3) Afford the victim the rights provided by law;

(4) In serious offenses, state its statutory findings and give reasons supporting those findings, if appropriate.

(B) Notification of right to appeal.

(1) After imposing sentence in a serious offense that has gone to trial, the court shall advise the defendant that the defendant has a right to appeal the conviction.

(2) After imposing sentence in a serious offense, the court shall advise the defendant of the defendant's right, where applicable, to appeal or to seek leave to appeal the sentence imposed.

(3) If a right to appeal or a right to seek leave to appeal applies under division (B)(1) or (B)(2) of this rule, the court also shall advise the defendant of all of the following:

(a) That if the defendant is unable to pay the cost of an appeal, the defendant has the right to appeal without payment;

(b) That if the defendant is unable to obtain counsel for an appeal, counsel will be appointed without cost;

(c) That if the defendant is unable to pay the costs of documents necessary to an appeal, the documents will be provided without cost;

(d) That the defendant has a right to have a notice of appeal timely filed on his or her behalf.

Upon defendant's request, the court shall forthwith appoint counsel for appeal.

(C) Judgment.

A judgment of conviction shall set forth the fact of conviction and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.

[Effective: July 1, 1973; amended effective July 1, 1992; July 1, 1998, July 1, 2004; July 1. 2009; July 1, 2013.]

Staff Notes (July 1, 2013 Amendments)

Rule 32(C) sets forth the four essential elements required for a judgment of conviction as defined by the Supreme Court of Ohio. See *State v. Lester*, 2011-Ohio-5204. The previous rule arguably required the judgment to specify the specific manner of conviction, e.g., plea, verdict, or findings upon with the conviction is based. The amendment to the rule allows, but does not require, the judgment to specify the specific manner of conviction. When a judgment of conviction reflects the four substantive provisions, as set forth by the Supreme Court of Ohio, it is a final order subject to appeal.

Staff Note (July 1, 2004 Amendment)

Rule 32(A) Imposition of sentence.

Criminal Rule 32(A) was amended to conform with the Supreme Court of Ohio's decision in *State v. Comer*, 99 Ohio St. 3d 463, 2003-Ohio 4165. The *Comer* decision mandates that a trial court must make specific statutory findings and the reasons supporting those findings when a trial court, in serious offenses, imposes consecutive sentences or nonminimum sentences on a first offender pursuant to R.C.2929.14(B), 2929.14(E)(4) and 2929.19(B)(2). Crim. R. 32(A) was modified to ensure there was no discrepancy in the criminal rules and the Court's holding in *Comer*.

RULE 32.1. Withdrawal of Guilty Plea.

A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.

[Effective: July 1, 1973; amended effective July 1, 1998.]

RULE 32.2. Presentence Investigation.

Unless the defendant and the prosecutor in the case agree to waive the presentence investigation report, the court shall, in felony cases, order a presentence investigation and report before imposing community control sanctions or granting probation. The court may order a presentence investigation report notwithstanding the agreement to waive the report. In misdemeanor cases the court may order a presentence investigation before granting probation.

[Effective: July 1, 1973; amended effective July 1, 1976; July 1, 1998; July 1, 2017.]

RULE 32.3. Revocation of Probation.

(A) Hearing. The court shall not impose a prison term for violation of the conditions of a community control sanction or revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which action is proposed. The defendant may be admitted to bail pending hearing.

(B) Counsel. The defendant shall have the right to be represented by retained counsel and shall be so advised. Where a defendant convicted of a serious offense is unable to obtain counsel, counsel shall be assigned to represent the defendant, unless the defendant after being fully advised of his or her right to assigned counsel, knowingly, intelligently, and voluntarily waives the right to counsel. Where a defendant convicted of a petty offense is unable to obtain counsel, the court may assign counsel to represent the defendant.

(C) Confinement in petty offense cases. If confinement after conviction was precluded by Crim.R. 44(B), revocation of probation shall not result in confinement.

If confinement after conviction was not precluded by Crim.R. 44(B), revocation of probation shall not result in confinement unless, at the revocation hearing, there is compliance with Crim.R.44(B).

(D) Waiver of counsel. Waiver of counsel shall be as prescribed in Crim.R. 44(C).

[Effective: July 1, 1973; amended effective July 1, 1998.]

RULE 33. New Trial.

(A) Grounds. A new trial may be granted on motion of the defendant for any of the following causes affecting materially the defendant's substantial rights:

(1) Irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial;

(2) Misconduct of the jury, prosecuting attorney, or the witnesses for the state;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) That the verdict is contrary to law;

(5) Error of law occurring at the trial;

(6) When new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing on the motion, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as is reasonable under all the circumstances of the case. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses.

(B) Motion for new trial; form, time. Application for a new trial shall be made by motion which, except for the cause of newly discovered evidence, shall be filed within fourteen days after the verdict was rendered, or the decision of the court where a trial by jury has been waived, unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing his motion for a new trial, in which case the motion shall be filed within seven days from the order of the court finding that the defendant was unavoidably prevented from filing such motion within the time provided herein.

Motions for new trial on account of newly discovered evidence shall be filed within one hundred twenty days after the day upon which the verdict was rendered, or the decision of the court where trial by jury has been waived. If it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which he must rely, such motion shall be filed within seven days from an order of the court finding that he was unavoidably prevented from discovering the evidence within the one hundred twenty day period.

(C) Affidavits required. The causes enumerated in subsection (A)(2) and (3) must be sustained by affidavit showing their truth, and may be controverted by affidavit.

(D) Procedure when new trial granted. When a new trial is granted by the trial court, or when a new trial is awarded on appeal, the accused shall stand trial upon the charge or charges of which he was convicted.

(E) Invalid grounds for new trial. No motion for a new trial shall be granted or verdict set aside, nor shall any judgment of conviction be reversed in any court because of:

(1) An inaccuracy or imperfection in the indictment, information, or complaint, provided that the charge is sufficient to fairly and reasonably inform the defendant of all the essential elements of the charge against him.

(2) A variance between the allegations and the proof thereof, unless the defendant is misled or prejudiced thereby;

(3) The admission or rejection of any evidence offered against or for the defendant, unless the defendant was or may have been prejudiced thereby;

(4) A misdirection of the jury, unless the defendant was or may have been prejudiced thereby;

(5) Any other cause, unless it affirmatively appears from the record that the defendant was prejudiced thereby or was prevented from having a fair trial.

(F) Motion for new trial not a condition for appellate review. A motion for a new trial is not a prerequisite to obtain appellate review.

[Effective: July 1, 1973. Amended effective July 1, 2021; July 1, 2022.]

Staff Notes (July 1, 2021 Amendment)

Crim R 33 New Trial

In Crim R 33(A)(4), the words “is not sustained by sufficient evidence or” were removed pursuant to the Supreme Court of Ohio’s ruling in *State v. Ramirez*, 2020-Ohio-602.

RULE 34. Arrest of Judgment.

The court on motion of the defendant shall arrest judgment if the indictment, information, or complaint does not charge an offense or if the court was without jurisdiction of the offense charged. The motion shall be made within fourteen days after verdict, or finding of guilty, or after plea of guilty or no contest, or within such further time as the court may fix during the fourteen day period.

When the judgment is arrested, the defendant shall be discharged, and his position with respect to the prosecution is as if the indictment, information, or complaint had not been returned or filed.

[Effective: July 1, 1973.]

RULE 35. Post-Conviction Petition.

(A) A petition for post-conviction relief pursuant to section 2953.21 of the Revised Code shall contain a case history, statement of facts, and separately identified grounds for relief. Each ground for relief shall not exceed three pages in length. (See recommended Form XV in Appendix of Forms.) A petition may be accompanied by an attachment of exhibits or other supporting materials. A trial court may extend the page limits provided in this rule, request further briefing on any ground for relief presented, or direct the petitioner to file a supplemental petition in the recommended form.

(B) The clerk of court immediately shall send a copy of the petition to the prosecuting attorney. Upon order of the trial court, the clerk of court shall duplicate all or any part of the record that the trial court requires.

(C) The trial court shall file its ruling upon a petition for post-conviction relief, including findings of fact and conclusions of law if required by law, not later than one hundred eighty days after the petition is filed.

[Effective: July 1, 1997.]

RULE 36. Clerical Mistakes.

Clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time.

[Effective: July 1, 1973.]

RULE 37. Notice to Alleged Victims; Victim's Rights.

To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall ensure that the alleged victim, upon request, be given notice of all public proceedings involving the alleged criminal offense against the victim and the opportunity to be present at all such proceedings. In this regard, the trial court may direct the prosecuting attorney to provide such notice to the alleged victim.

To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall, upon request, provide the alleged victim the opportunity to be heard in any public proceeding in which a right of the alleged victim is implicated, including but not limited to public proceedings involving release, plea, sentencing, or disposition.

Staff Notes (July 1, 2019 Amendment)

Crim R 37 Victim's Opportunity to be Heard

Previously reserved, this new rule was added to comply with the 2017 amendment to Article I, Section 10a of the Ohio Constitution, also known as Marsy's Law.

RULES 38 TO 40 [RESERVED]

RULE 41. Search and Seizure.

(A) Authority to issue warrant. Upon the request of a prosecuting attorney or a law enforcement officer:

(1) A search warrant authorized by this rule may be issued by a judge of a court of record to search and seize property located within the court's territorial jurisdiction; and,

(2) A tracking device warrant authorized by this rule may be issued by a judge of a court of record to install a tracking device within the court's territorial jurisdiction. The warrant may authorize use of the device to track the movement of a person or property within or outside of the court's territorial jurisdiction, or both.

(B) Property which may be seized with a search warrant. A search warrant may be issued under this rule to search for and seize any: (1) evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed.

(C) Issuance and contents.

(1) A warrant shall issue on either an affidavit or affidavits sworn to before a judge of a court of record or an affidavit or affidavits communicated to the judge by reliable electronic means establishing the grounds for issuing the warrant. In the case of a search warrant, the affidavit shall name or describe the person to be searched or particularly describe the place to be searched, name or describe the property to be searched for and seized, state substantially the offense in relation thereto, and state the factual basis for the affiant's belief that such property is there located. In the case of a tracking device warrant, the affidavit shall name or describe the person to be tracked or particularly describe the property to be tracked, and state substantially the offense in relation thereto, state the factual basis for the affiant's belief that the tracking will yield evidence of the offense. If the affidavit is provided by reliable electronic means, the applicant communicating the affidavit shall be placed under oath and shall swear to or affirm the affidavit communicated.

(2) If the judge is satisfied that probable cause exists, the judge shall issue a warrant identifying the property to be seized and naming or describing the person or place to be searched or the person or property to be tracked. The warrant may be issued to the requesting prosecuting attorney or other law enforcement officer through reliable electronic means. The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the judge may require the affiant to appear personally or by reliable electronic means, and may examine under oath the affiant and any witnesses the affiant may produce. Such testimony shall be admissible at a hearing on a motion to suppress if taken down by a court reporter or recording equipment, transcribed, and made part of the affidavit. The warrant shall be directed to a law enforcement officer. A search warrant shall command the officer to search, within three days, the person or place named for the

property specified. A tracking device warrant shall command the officer to complete any installation authorized by the warrant within a specified time no longer than 10 days, and shall specify the time that the device may be used, not to exceed 45 days. The court may, for good cause shown, grant one or more extensions of time that the device may be used, for a reasonable period not to exceed 45 days each. The warrant shall be executed in the daytime, unless the issuing court, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. The warrant shall provide that the warrant shall be returned to a designated judge or clerk of court.

(D) Execution and return of the warrant.

(1) *Search warrant.* The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly, either in person or by reliable electronic means, and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant. Property seized under a warrant shall be kept for use as evidence by the court which issued the warrant or by the law enforcement agency which executed the warrant.

(2) *Tracking Device warrant.* The officer executing a tracking device warrant shall enter onto the warrant the exact date and time the device was installed and the period during which it was used. The return shall be made promptly, either in person or by reliable electronic means, after the use of the tracking device has ended. Within 10 days after the use of the tracking device has ended, the officer executing a tracking device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person’s residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person’s last known address. Upon the request of a prosecuting attorney or a law enforcement officer, and for good cause shown, the court may authorize notice to be delayed for a reasonable period.

(E) Return of papers to clerk. The law enforcement officer shall attach to the warrant a copy of the return, inventory, and all other papers in connection therewith and shall file them with the clerk or the judge, if the warrant so requires.

(F) Definition of property and daytime. The term "property" is used in this rule to include documents, books, papers and any other tangible objects. The term "daytime" is used in this rule to mean the hours from 7:00 a.m. to 8:00 p.m.

(G) Definition of tracking device. The term "tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.

[Effective: July 1, 1973; amended effective July 1, 2010; July 1, 2014; July 1, 2021.]

Staff Note (July 1, 2010 Amendments)

The revisions to Crim. R. 41 now permit an applicant for a search warrant to be in communication with a judge by reliable electronic means. The concept of reliable electronic means is seen as broad enough to encompass present communication technologies as well as those that may be developed over the next decades. Nothing in these revisions is intended to lessen the requirement that the judge confirm the identity of the applying law enforcement officer, that the judge is satisfied that probable cause for a warrant exists, and that an appropriate record for subsequent review is created.

RULE 42. Capital Cases and Post-Conviction Review of Capital Cases.

(A) Definitions. As used in this rule:

(1) "Capital cases" means all cases in which an indictment or count in an indictment charges the defendant with aggravated murder and contains one or more specifications of aggravating circumstances listed in R.C. 2929.03(A).

(2) "Post-conviction review of a capital case" means any post-conviction proceedings reviewing the conviction or sentence in any case in which the death penalty has been imposed, other than direct appeal to the Supreme Court of Ohio.

(B) General.

(1) This rule shall apply to all capital cases and post-conviction review of a capital case.

(2) The clerk shall accept for filing, and the court shall rule on, any properly presented motion.

(3) In all proceedings involving a post-conviction review of a capital case, both of the following shall apply:

(a) The court shall state specifically why each claim was either denied or granted;

(b) There shall be no page limitations or word count limitations for the petition filed with the common pleas court.

(C) Access file material. In a capital case and post-conviction review of a capital case, the prosecuting attorney and the defense attorney shall, upon request, be given full and complete access to all documents, statements, writings, photographs, recordings, evidence, reports, or any other file material in possession of the state related to the case, provided materials not subject to disclosure pursuant to Crim.R 16(J) shall not be subject to disclosure under this rule.

(D) Pretrial and post-trial conferences. In a capital case and post-conviction review of a capital case, the trial court shall conduct all pretrial and post-trial conferences on the record.

(E) Experts.

(1) The trial court is the appropriate authority for the appointment of experts for indigent defendants in all capital cases and in post-conviction review of a capital case.

(2) All decisions pertaining to the appointment of experts shall be made on the record at a pretrial conference. Upon request by defense counsel, the demand for the appointment of an expert shall be made in camera and ex parte, and the order concerning the appointment shall be under seal.

(3) Upon establishing counsels' respective compliance with discovery obligations, the trial court shall decide the issue of appointment of experts, including projected expert fees, the amount of time to be applied to the case, and incremental fees as the case progresses. The trial court shall make written findings as to the basis of any denial.

(4) The appeal of an order regarding appointment of experts shall be governed by App.R. 11.1.

[Effective: July 1, 2017.]

RULE 43. Presence of the Defendant.

(A) Defendant's presence.

(1) Except as provided in Rule 10 of these rules and division (A)(2) of this rule, the defendant must be physically present at every stage of the criminal proceeding and trial, including the impaneling of the jury, the return of the verdict, and the imposition of sentence, except as otherwise provided by these rules. In all prosecutions, the defendant's voluntary absence after the trial has been commenced in the defendant's presence shall not prevent continuing the trial to and including the verdict. A corporation may appear by counsel for all purposes.

(2) Notwithstanding the provisions of division (A)(1) of this rule, in misdemeanor cases or in felony cases where a waiver has been obtained in accordance with division (A)(3) of this rule, the court may permit the presence and participation of a defendant by remote contemporaneous video for any proceeding if all of the following apply:

(a) The court gives appropriate notice to all the parties;

(b) The video arrangements allow the defendant to hear and see the proceeding;

(c) The video arrangements allow the defendant to speak, and to be seen and heard by the court and all parties;

(d) The court makes provision to allow for private communication between the defendant and counsel. The court shall inform the defendant on the record how to, at any time, communicate privately with counsel. Counsel shall be afforded the opportunity to speak to defendant privately and in person. Counsel shall be permitted to appear with defendant at the remote location if requested.

(e) The proceeding may involve sworn testimony that is subject to cross examination, if counsel is present, participates and consents.

(3) The defendant may waive, in writing or on the record, the defendant's right to be physically present under these rules with leave of court.

(B) Defendant excluded because of disruptive conduct. Where a defendant's conduct in the courtroom is so disruptive that the hearing or trial cannot reasonably be conducted with the defendant's continued physical presence, the hearing or trial may proceed in the defendant's absence or by remote contemporaneous video, and judgment and sentence may be pronounced as if the defendant were present. Where the court determines that it may be essential to the preservation of the constitutional rights of the defendant, it may take such steps as are required for the communication of the courtroom proceedings to the defendant.

[Effective: July 1, 1973; amended effective July 1, 2008.]

Staff Note (July 1, 2008 amendments)

Rule 43 is amended so that in misdemeanor cases and in felony cases where the defendant has waived the right to be present, the "presence" requirement can be satisfied either by physical presence or presence by video teleconferencing. Advances in video teleconferencing technology have enabled courts to save considerable expense by conducting proceedings by video teleconferencing while still preserving the rights of the defendant.

In order to ensure that the defendant's rights are protected, any proceeding conducted through video teleconferencing must meet certain requirements: the defendant must be able to see and hear the judge, the judge must be able to see and hear the defendant, and the defendant must have the ability to communicate confidentially with his or her attorney. Furthermore, presence by video teleconferencing is permitted under limited circumstances involving sworn testimony. Counsel must be present and must consent to the use of video teleconferencing. Contemplated in this type of hearing is a miscellaneous criminal proceeding such as probation revocation, protection order hearing or bond motion.

RULE 44. Assignment of Counsel.

(A) Counsel in serious offenses. Where a defendant charged with a serious offense is unable to obtain counsel, counsel shall be assigned to represent the defendant at every stage of the proceedings from their initial appearance before a court through appeal as of right, unless the defendant, after being fully advised of their right to assigned counsel, knowingly, intelligently, and voluntarily waives their right to counsel.

(B) Counsel in petty offenses. Where a defendant charged with a petty offense is unable to obtain counsel, the court may assign counsel to represent the defendant. When a defendant charged with a petty offense is unable to obtain counsel, no sentence of confinement may be imposed upon the defendant, unless after being fully advised by the court, the defendant knowingly, intelligently, and voluntarily waives assignment of counsel.

(C) Waiver of counsel. Waiver of counsel shall be in open court and the advice and waiver shall be recorded as provided in Rule 22. In addition, in serious offense cases the waiver shall be in writing.

(D) Assignment procedure. The determination of whether a defendant is able or unable to obtain counsel shall be made in a recorded proceeding in open court.

[Effective: July 1, 1973.]

RULE 45. Time.

(A) Time: computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any court, by order of court, or by any applicable statute, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in computation.

(B) Time: enlargement. When an act is required or allowed to be performed at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefor is made before expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion permit the act to be done after expiration of the specified period, if the failure to act on time was the result of excusable neglect or would result in injustice to the defendant. The court may not extend the time for taking any action under Rule 23, Rule 29, Rule 33, and Rule 34 except to the extent and under the conditions stated in them.

(C) Time: unaffected by expiration of term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of a court to do any act in a criminal proceeding.

(D) Time: for motions; affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not late than seven days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion. Opposing affidavits may be served not less than one day before the hearing, unless the court permits them to be served at a later time.

(E) Time: additional time after service by mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him, and the notice or other paper is served upon him by mail, three days shall be added to the prescribed period. This subdivision does not apply to responses to service of summons under Rule 4 and Rule 9.

[Effective: July 1, 1973.]

RULE 46. Pretrial Release and Detention.

(A) Pretrial detention. A defendant may be detained pretrial, pursuant to a motion by the prosecutor or the court's own motion, in accordance with the standards and procedures set forth in the Revised Code.

(B) Pretrial release. Unless the court orders the defendant detained under division (A) of this rule, the court shall release the defendant on the least restrictive conditions that, in the discretion of the court, will reasonably assure the defendant's appearance in court, the protection or safety of any person or the community, and that the defendant will not obstruct the criminal justice process. If the court orders financial conditions of release, those financial conditions shall be related to the defendant's risk of non-appearance, the seriousness of the offense, and the previous criminal record of the defendant. Any financial conditions shall be in an amount and type which are least costly to the defendant while also sufficient to reasonably assure the defendant's future appearance in court.

(1) Financial conditions of release. Any person who is entitled to release shall be released upon one or more of the following types of bail in the amount set by the court:

(a) An unsecured bail bond;

(b) A bail bond secured by the deposit of ten percent of the amount of the bond in cash. Ninety percent of the deposit shall be returned upon compliance with all conditions of the bond;

(c) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the defendant.

(2) Non-financial conditions of release. The court may impose any of the following conditions of release:

(a) The personal recognizance of the accused;

(b) Place the person in the custody of a designated person or organization agreeing to supervise the person;

(c) Place restrictions on the travel, association, or place of abode of the person during the period of release;

(d) Place the person under a house arrest, electronic monitoring, or work release program;

(e) Regulate or prohibit the person's contact with the victim;

(f) Regulate the person's contact with witnesses or others associated with the case upon proof of the likelihood that the person will threaten, harass, cause injury, or seek to intimidate those persons;

(g) Require completion of drug and/or alcohol assessment and compliance with treatment recommendations, for any person charged with an offense that is alcohol or drug related, or where alcohol or drug influence or addiction appears to be a contributing factor in the offense, and who appears based upon an evaluation, prior treatment history, or recent alcohol or drug use, to be in need of treatment;

(h) Require compliance with alternatives to pretrial detention, including but not limited to diversion programs, day reporting, or comparable alternatives, to ensure the person's appearance at future court proceedings;

(i) Any other constitutional condition considered reasonably necessary to reasonable assure appearance or public safety.

(C) Factors. Subject to subsection (G)(2) of this rule, in determining the types, amounts, and conditions of bail, the court shall consider all relevant information, including but not limited to:

(1) The nature and circumstances of the crime charged, and specifically whether the defendant used or had access to a weapon;

(2) The weight of the evidence against the defendant;

(3) The confirmation of the defendant's identity;

(4) The defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution;

(5) Whether the defendant is on probation, a community control sanction, parole, post-release control, bail, or under a court protection order.

(D) Appearance pursuant to summons. When summons has been issued and the defendant has appeared pursuant to the summons, absent good cause, there is a presumption of release on personal recognizance.

(E) Continuation of bail. When a judicial officer, either on motion of a party or on the court's own motion, determines that the considerations set forth in subsections (B) and (C) require a modification of the conditions of release, the judicial officer may order additional or different types, amounts or conditions of bail, or may eliminate or lessen conditions of bail determined to be no longer necessary. Unless a modification is agreed to by the parties, the court shall hold a hearing on the modification of bond as promptly as possible. Unless modified by the judicial officer, or if application is made by a surety for discharge from a bond pursuant to R.C. 2937.40, conditions of release shall continue until the return of a verdict or the entry of a guilty plea, or a no-contest plea, and may continue thereafter pending sentence or disposition of the case on review.

(F) Information need not be admissible. Information stated in or offered in connection with any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law. Statements or admissions of the defendant made at a bail proceeding or in the course of compliance with a condition of bail shall not be received as substantive evidence in the trial of the case.

(G) Bond schedule.

(1) In order to expedite the prompt release of a defendant prior to initial appearance, each court shall establish a bail bond schedule covering all misdemeanors including traffic offenses, either specifically, by type, by potential penalty, or by some other reasonable method of classification. The court also may include requirements for release in consideration of divisions (B) and (C)(5) of this rule. The sole purpose of a bail schedule is to allow for the consideration of release prior to the defendant's initial appearance.

(2) A bond schedule shall not be considered as "relevant information" under division (C) of this rule.

(3) Each municipal or county court shall, by rule, establish a method whereby a person may make bail by use of a credit card.

(4) Each court shall review its bail bond schedule biennially by January 31 of each even numbered year, to ensure an appropriate bail bond schedule that does not result in the unnecessary detention of defendants due to inability to pay.

(H) Review of Release Conditions. A person who has been arrested, either pursuant to a warrant or without a warrant, and who has not been released on bail, shall be brought before a judicial officer for an initial bail hearing no later than the second court day following the arrest. That bail hearing may be combined with the initial appearance provided for in Crim. R. 5(A).

If, at the initial bail hearing before a judicial officer, the defendant was not represented by counsel, and if the defendant has not yet been released on bail, a second bail hearing shall be held on the second court day following the initial bail hearing. An indigent defendant shall be afforded representation by appointed counsel at State's expense at this second bail hearing.

(I) Failure to appear; breach of conditions. Any person who fails to appear before any court as required is subject to the punishment provided by the law, and any bail given for the person's release may be forfeited. If there is a breach of condition of bail, the court may amend the bail.

(J) Justification of sureties. Every surety, except a corporate surety licensed as provided by law, shall justify by affidavit, and may be required to describe in the affidavit, the property that the surety proposes as security and the encumbrances on it, the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged, and all of the surety's other liabilities. The surety shall provide other evidence of financial

responsibility as the court or clerk may require. No bail bond shall be approved unless the surety or sureties appear, in the opinion of the court or clerk, to be financially responsible in at least the amount of the bond. No licensed attorney at law shall be a surety.

[Effective: July 1, 1973; amended effective July 1, 1990; July 1, 1994; July 1, 1998; July 1, 2006; July 1, 2020.]

Staff Note (July 1, 2020 Amendment)

Crim.R. 46

Crim. R. 46 has been amended to improve efficiency in setting bail in an amount that effectively ensures (1) the defendant's continued presence at future proceedings, (2) that future proceedings will not be impeded by any effort to obstruct justice, and (3) the safety of any person as well as the community in general. Crim. R. 46 continues to entrust to the judicial officer's sound discretion the setting of particular conditions of release that will be imposed on a particular defendant in a particular case. At the same time, the amendments seek to ensure that excessive money bails are not used as a means of simply denying a defendant bail without benefit of a detention hearing prescribed by statute. See R.C. 2937.222

The title of Crim. R. 46 has been changed to recognize that pretrial detention is available under the Revised Code in those cases where no conditions of release are reasonably available. Subsection (A) has been added to that same effect.

Subsection (B) recognizes that conditions of release include both financial and non-financial conditions, either or both of which may be employed by the judicial officer in the exercise of the judicial officer's discretion. Financial conditions should be the least costly to reasonably ensure the defendant's presence at future proceedings; limiting financial conditions to ensuring against risk of flight is consistent with subsection (I), which provides that bond can only be forfeited when a defendant fails to appear at a future proceeding. The subsection's list of non-financial conditions is not exclusive, but identifies a number of non-financial conditions already employed by courts in Ohio and elsewhere.

Subsection (G) recognizes that a bond schedule is to be used for the sole purpose of securing a release before an initial appearance, and is not to be considered by a judicial officer during a bond hearing.

Subsection (H) has been amended to ensure that a person arrested who has not already been released pursuant to posting a bond specified in a bond schedule or prescribed in an arrest warrant, will appear before a judicial officer no later than the second court day after arrest. If the defendant's appearance at that time is without counsel, and if the defendant has not yet been released, then a second hearing, with the opportunity for the defendant to be represented by counsel, must take place within two court days after the initial court appearance.

Staff Note (July 1, 2006 Amendment)

Rule 46 was modified, effective July 1, 1998, to reflect the amendment to Article I, Section 9 of the Ohio Constitution approved by the voters in November 1997. Subsequent changes in the law, such as the standard civil protection order forms promulgated by the Supreme Court (Rule 10.01 of the Rules of Superintendence for the Courts of Ohio) and legislative revisions to the criminal code make some elaboration appropriate. The changes to divisions (B), (C), and (G) are intended to update the rule to reflect available technology, provide for greater safety, amplify the options that may be used by the trial court, and confirm the ability of a trial court to control conditions and type of bail.

Rule 46(B) Conditions of bail

Division (B)(3) is modified to include electronic monitoring as one of the permissible conditions of bail that may be imposed by the trial court.

Rule 46(C) Factors

Division (C) is amended to permit the trial court to consider two express factors in determining the amount and conditions of bail. Division (C)(1) permits the trial court to consider whether the defendant used or had access to a weapon. Division (C)(5) allows the court to consider whether the defendant is subject to a court-issued protection order.

Rule 46(G) Bond schedule

Division (G) is revised to permit the court to include factors and conditions of bail in the bond schedule that the court must establish.

RULE 47. Motions.

An application to the court for an order shall be by motion. A motion, other than one made during trial or hearing, shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It shall be supported by a memorandum containing citations of authority, and may also be supported by an affidavit.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

[Effective: July 1, 1973.]

RULE 48. Dismissal.

(A) Dismissal by the state. The state may by leave of court and in open court file an entry of dismissal of an indictment, information, or complaint and the prosecution shall thereupon terminate.

(B) Dismissal by the court. If the court over objection of the state dismisses an indictment, information, or complaint, it shall state on the record its findings of fact and reasons for the dismissal.

[Effective: July 1, 1973.]

RULE 49. Service and Filing of Papers.

(A) Service: when required. Written notices, requests for discovery, designation of record on appeal, written motions other than those heard ex parte, and similar papers, shall be served upon each of the parties.

(B) Service: how made. Whenever under these rules or by court order service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon the party shall be made in the manner provided in Civil Rule 5(B).

(C) Filing. All papers required to be served upon a party shall be filed simultaneously with or immediately after service. Papers filed with the court shall not be considered until proof of service is endorsed thereon or separately filed. The proof of service shall state the date and the manner of service and shall be signed and filed in the manner provided in Civil Rule 5(D).

[Effective: July 1, 1973.]

RULE 50. Calendars.

Criminal cases shall be given precedence over civil matters and proceedings.

[Effective: July 1, 1973.]

RULE 51. Exceptions Unnecessary.

An exception, at any stage or step of the case or matter, is unnecessary to lay a foundation for review, whenever a matter has been called to the attention of the court by objection, motion, or otherwise, and the court has ruled thereon.

[Effective: July 1, 1973.]

RULE 52. Harmless Error and Plain Error.

(A) Harmless error. Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.

(B) Plain error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

[Effective: July 1, 1973.]

RULE 53. [RESERVED]

RULE 54. Amendment of Incorporated Civil Rules.

An amendment to or recision of any provision of the Ohio Rules of Civil Procedure which has been incorporated by reference in these rules, shall, without the necessity of further action, be incorporated by reference in these rules unless the amendment or recision specifies otherwise, effective on the effective date of the amendment or recision.

[Effective: July 1, 1973.]

RULE 55. Records.

(A) Criminal appearance docket. The clerk shall keep a criminal appearance docket. Upon the commencement of a criminal action the clerk shall assign each action a number. This number shall be placed on the first page, and every continuation page, of the appearance docket which concerns the particular action. In addition this number and the names of the parties shall be placed on the case file and every paper filed in the action.

At the time the action is commenced the clerk shall enter in the appearance docket the names, except as provided in Rule 6(E), of the parties in full, the names of counsel and index the action by the name of each defendant. Thereafter the clerk shall chronologically note in the appearance docket all: process issued and returns, pleas and motions, papers filed in the action, orders, verdicts and judgments. The notations shall be brief but shall show the date of filing and the substance of each order, verdict and judgment.

An action is commenced for purposes of this rule by the earlier of, (a) the filing of a complaint, uniform traffic ticket, citation, indictment, or information with the clerk, or (b) the receipt by the clerk of the court of common pleas of a bind over order under Rule 5(B)(4)(a).

(B) Files. All papers filed in a case shall be filed in a separate file folder and on or after July 1, 1986 shall not exceed 8 1/2 inches x 11 inches in size and without backing or cover.

(C) Other books and records. The clerk shall keep such other books and records as required by law and as the supreme court or other court may from time to time require.

(D) Applicability to courts not of record. In courts not of record the notations required by subdivision (A) shall be placed on a separate sheet or card kept in the file folder.

[Effective: July 1, 1973; amended effective July 1, 1985.]

RULE 56. [RESERVED]

RULE 57. Rule of Court; Procedure Not Otherwise Specified.

(A) Rule of court.

(1) The expression "rule of court" as used in these rules means a rule promulgated by the Supreme Court or a rule concerning local practice adopted by another court that is not inconsistent with the rules promulgated by the Supreme Court and is filed with the Supreme Court.

(2) Local rules shall be adopted only after the court gives appropriate notice and an opportunity for comment. If the court determines that there is an immediate need for a rule, the court may adopt the rule without prior notice and opportunity for comment, but promptly shall afford notice and opportunity for comment.

(B) Procedure not otherwise specified. If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules of criminal procedure, and shall look to the rules of civil procedure and to the applicable law if no rule of criminal procedure exists.

[Effective: July 1, 1973; amended effective July 1, 1994.]

RULE 58. Forms.

The forms contained in the Appendix of Forms which the Supreme Court from time to time may approve are sufficient under these rules and shall be accepted for filing by courts of this state. Forms adopted by local courts that are substantially similar to the forms in the Appendix of Forms, may also be accepted for filing. The forms in the Appendix of Forms are intended to indicate the simplicity and brevity of statement which these rules contemplate.

[Effective: July 1, 1973; amended effective July 1, 2011.]

Staff Note (July 1, 2011 Amendment)

Criminal Rule 58 is amended to specify that forms contained in the Appendix of Forms provide a "safe haven" for litigants. The forms must be accepted by local courts as sufficient under the rules. Local courts may still adopt local forms which can also be accepted for filing. The amendment is intended to make it easier for pro se litigants and practitioners to access courts and justice by allowing for standardized forms in certain proceedings.

RULE 59. Effective Date.

(A) Effective date of rules. These rules shall take effect on July 1, 1973, except for rules or portions of rules for which a later date is specified, which shall take effect on such later date. They govern all proceedings in actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(B) Effective date of amendments. The amendments submitted by the supreme court to the general assembly on January 10, 1975, shall take effect on July 1, 1975. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedures applies.

(C) Effective date of amendments. The amendments submitted by the supreme court to the general assembly on January 9, 1976, shall take effect on July 1, 1976. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(D) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on January 12, 1978, and on April 28, 1978, shall take effect on July 1, 1978. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(E) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on January 14, 1980, shall take effect on July 1, 1980. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(F) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on January 14, 1981, and on April 29, 1981, shall take effect on July 1, 1981. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(G) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on January 14, 1982 shall take effect on July 1, 1982. They govern all

proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(H) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on December 24, 1984 and January 8, 1985 shall take effect on July 1, 1985. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(I) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on January 12, 1990 and further revised and submitted on April 16, 1990, shall take effect on July 1, 1990. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(J) Effective date of amendments. The amendments filed by the Supreme Court with the General Assembly on January 14, 1992 and further revised and filed on April 30, 1992, shall take effect on July 1, 1992. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(K) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on January 8, 1993 and further filed on April 30, 1993 shall take effect on July 1, 1993. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(L) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on January 14, 1994 and further filed on April 29, 1994 shall take effect on July 1, 1994. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(M) Effective date of amendments. The amendments to rules 12 and 19 filed by the Supreme Court with the General Assembly on January 11, 1995 shall take effect on July 1, 1995. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(N) Effective date of amendments. The amendments to Rule 1 filed by the Supreme Court with the General Assembly on January 5, 1996 and refiled on April 26, 1996 shall take effect on July 1, 1996. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(O) Effective date of amendments. The amendments to Rule 35 filed by the Supreme Court with the General Assembly on January 10, 1997 and refiled on April 24, 1997 shall take effect on July 1, 1997. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(P) Effective date of amendments. The amendments to Rules 4, 11, 12, 32, 32.1, 32.2, 32.3, and 46 filed by the Supreme Court with the General Assembly on January 15, 1998 and further revised and refiled on April 30, 1998 shall take effect on July 1, 1998. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(Q) Effective date of amendments. The amendments to Criminal Rules 7, 17.1, and 19 filed by the Supreme Court with the General Assembly on January 13, 2000 and refiled on April 27, 2000 shall take effect on July 1, 2000. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(R) Effective date of amendments. The amendments to Criminal Rule 12 filed by the Supreme Court with the General Assembly on January 12, 2001, and refiled on April 26, 2001, shall take effect on July 1, 2001. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(S) Effective date of amendments. The amendments to Criminal Rule 24 filed by the Supreme Court with the General Assembly on January 11, 2002, and refiled on April 18, 2002, shall take effect on July 1, 2002. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(T) Effective date of amendments. The amendments to Criminal Rules 4.1, 21, and 32, filed by the Supreme Court with the General Assembly on January 7, 2004 and refiled on April

28, 2004 shall take effect on July 1, 2004. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(U) Effective date of amendments. The amendments to Criminal Rules 24 and 30 filed by the Supreme Court with the General Assembly on January 14, 2005 and revised and refiled on April 20, 2005 shall take effect on July 1, 2005. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(V) Effective date of amendments. The amendments to Criminal Rules 19, 24, and 46 filed by the Supreme Court with the General Assembly on January 12, 2006 shall take effect on July 1, 2006. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(W) Effective date of amendments. The amendments to Criminal Rules 10, 24, and 43 filed by the Supreme Court with the General Assembly on January 14, 2008 and refiled on April 28, 2008 shall take effect on July 1, 2008. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(X) Effective date of amendments. The amendments to Criminal Rules 24 and 32 filed by the Supreme Court with the General Assembly on January 14, 2009 and refiled on April 30, 2009 shall take effect on July 1, 2009. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(Y) Effective date of amendments. The amendments to Criminal Rules 12, 16 and 41 filed by the Supreme Court with the General Assembly on January 14, 2010 and revised and refiled on April 28, 2010 shall take effect on July 1, 2010. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(Z) Effective date of amendments. The amendments to Criminal Rule 12, 14, 19, and 58 filed by the Supreme Court with the General Assembly on January 5, 2011 and refiled on April 21, 2011 shall take effect on July 1, 2011. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(AA) Effective date of amendments. The amendments to Criminal Rule 5, 15, and 59 filed by the Supreme Court with the General Assembly on January 13, 2012 and revised and refiled on April 30, 2012 shall take effect on July 1, 2012. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(BB) Effective date of amendments. The amendments to Criminal Rule 12, 32, and 59 filed by the Supreme Court with the General Assembly on January 15, 2013 and refiled on April 29, 2013 shall take effect on July 1, 2013. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(CC) Effective date of amendments. The amendments to Criminal Rule 4, 41, and 59 filed by the Supreme Court with the General Assembly on January 15, 2014 and refiled on April 30, 2014 shall take effect on July 1, 2014. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(DD) Effective date of amendments. The amendments to Criminal Rule 16 and 59 filed by the Supreme Court with the General Assembly on January 13, 2016 and refiled on April 29, 2016 shall take effect on July 1, 2016. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(EE) Effective date of amendments. The amendments to Criminal Rules 5, 32.2, and 42 filed by the Supreme Court with the General Assembly on January 6, 2017 and refiled on April 26, 2017 shall take effect on July 1, 2017. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(FF) Effective date of amendments. The amendments to Criminal Rule 4, filed by the Supreme Court with the General Assembly on January 9, 2018 and refiled on April 24, 2018 shall take effect on July 1, 2018. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(GG) Effective date of amendments. The amendments to Criminal Rules 4, 6, 11, 12, 16, and 37, filed by the Supreme Court with the General Assembly on January 9, 2019 and refiled on April 24, 2019 shall take effect on July 1, 2019. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent

that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(HH) Effective date of amendments. The amendments to Criminal Rules 44 and 46, filed by the Supreme Court with the General Assembly on January 15, 2020 and refiled on March 12, 2020 and April 22, 2020 shall take effect on July 1, 2020. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(II) Effective date of amendments. The amendments to Criminal Rules 11, 19, 33, and 41, filed by the Supreme Court with the General Assembly on January 13, 2021 and refiled on April 29, 2021 shall take effect on July 1, 2021. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(JJ) Effective date of amendments. The amendments to Criminal Rules 3, 4, 12.1, 12.2, 29, and 33, filed by the Supreme Court with the General Assembly on January 12, 2022 and refiled on April 26, 2022 shall take effect on July 1, 2022. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

RULE 60. Title.

These rules shall be known as the Ohio Rules of Criminal Procedure and may be cited as "Criminal Rules" or "Crim.R.___."

[Effective: July 1, 1973.]

FORM I

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio)
/City of Columbus/)
) NO._____
v.)
) COMPLAINT
_____)
name) (Rule 4)
)
_____)
address

Complainant being duly sworn states that _____ C.D.
defendant
at _____, County, Ohio on or about _____,
place
19_____ , _____
state the essential facts
_____

_____

in violation of _____.
state the numerical designation of the applicable statute or ordinance

A.B. _____
Complainant

Sworn to and subscribed before me by _____ on

_____, 19 _____.

_____
/ Judge / Clerk / Deputy Clerk /
Franklin County Municipal Court

or

_____
Notary Public,
My Commission expires _____, 19 _____
/ Franklin County / State of Ohio /

FORM II

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio)
/City of Columbus/) NO._____
)
v.) COMPLAINT BY
) PROSECUTING ATTORNEY
_____) UPON AFFIDAVIT
name)
) (Rule 4)
_____)
address)

Complainant prosecuting attorney being duly sworn states that _____
name of affiant
has filed an affidavit, a copy of which is attached hereto, stating that _____
C.D.
_____ at _____, County, Ohio on or
place
about _____, 19 ____, _____
state the essential facts
_____

_____

Upon this affidavit complainant states that _____ on or
C.D.
defendant
about the above date and at the above place did violate _____
state the numerical designation

_____ .
of the applicable statute or ordinance

A.B.
_____
Complainant, Title

Sworn to and subscribed before me by _____
A.B.
on _____, 19 ____.

_____
/ Judge / Clerk / Deputy Clerk /
Franklin County Municipal Court

or

_____
Notary Public,
My Commission expires _____, 19 ____
/ Franklin County / State of Ohio /

FORM III

/ FRANKLIN COUNTY MUNICIPAL COURT /
/ COURT OF COMMON PLEAS /
FRANKLIN COUNTY, OHIO

State of Ohio)
/City of Columbus/)
) NO._____
v.)
) DIRECTION TO ISSUE SUMMONS
_____)
name) (Rules 4 and 9)
)
_____)
address)

TO_____
/ Clerk / Deputy Clerk /

Issue summons to an appropriate officer and direct him to make / personal service / residence service / certified mail service / upon _____ C.D. _____ at / the address
defendant
stated in the caption of this direction./ _____
_____/
fill in address if different from caption

Special instructions for server:_____
_____
_____

_____
/ Judge / Officer Designated by Judge(s) /
Franklin County Municipal Court

or

_____
Judge
Court of Common Pleas
Franklin County, Ohio

FORM IV

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio)
/City of Columbus/)
)
v.)
)
_____)
name)
)
_____)
address)

NO._____

CLERK'S MEMORANDUM
OF DETERMINATION TO ISSUE
SUMMONS UPON COMPLAINT

(Rule 4)

It appearing that summons will reasonably assure the appearance of C.D. (defendant)

summons shall issue:

/ to an appropriate officer and such officer shall be directed to make / personal service / residence service /.

/ by certified mail /

Service shall be at / the address stated in the caption of this notice / _____

_____
fill in address if different from caption

Special instructions for server: _____

_____

_____

_____
/ Clerk / Deputy Clerk /
Franklin County Municipal Court

FORM V

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio)
/City of Columbus/) NO._____
)
v.) PROSECUTING ATTORNEY'S
_____) REQUEST FOR ISSUANCE OF
name) SUMMONS UPON COMPLAINT
)
_____) (Rule 4)
address)

TO_____
/ Clerk / Deputy Clerk /

A complaint has been filed against _____ C.D. _____
defendant

Issue summons to an appropriate officer and direct him to make / personal service / residence service / certified mail service / upon defendant at / the address stated in the caption of this request. / _____

_____ /
fill in address if different from caption

Special instructions for server: _____

_____

_____

_____
Prosecuting Attorney, Title

Form VI Summons upon complaint, indictment, or information

(Crim R 4, 9)

/FRANKLIN COUNTY MUNICIPAL COURT/
/COURT OF COMMON PLEAS/
FRANKLIN COUNTY, OHIO

State of Ohio
/City of Columbus/
v.
__[*name*]__
__[*address*]__

NO. _____

SUMMONS UPON/COMPLAINT/
/INDICTMENT/INFORMATION/

(Rules 4 and 9)

TO C.D. __[*defendant*]__:

A /complaint/indictment/information/, a copy of which is attached hereto, has been filed in the /Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio 43215,/Franklin County Court of Common Pleas, 410 South High Street, Columbus, Ohio 43215,/ charging that you: __[*describe the offense and state the numerical designation of the applicable statute or ordinance*]__.

You are hereby summoned and ordered to appear at __[*time, day, date, room*]__, /Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio 43215. /Franklin County Municipal Court of Common Pleas, 410 South High Street, Columbus, Ohio 43215./

If you fail to appear at the time and place stated above you may be arrested.

_____
/Judge/Officer Designated by Judge(s)/
Clerk/Deputy Clerk/
Franklin County Municipal Court

[*or*]

_____
Judge/Clerk/Deputy Clerk/
Court of Common Pleas
Franklin County, Ohio

NOTICE TO DEFENDANT: For information regarding your duty to appear call __[*fill in phone number(s)*]__.

CLERK'S INSTRUCTIONS TO SERVING OFFICER
FOR PERSONAL OR RESIDENCE SERVICE

TO __[*officer other than clerk authorized to serve summons*]__:

Make /personal service/residence service/ upon [*defendant*] at /the address stated in the caption of the summons./__[*fill in address for service if different from caption of summons*]__./

Special instructions for server:_____
_____.

_____
/Clerk/Deputy Clerk/

CLERK'S INSTRUCTIONS FOR
CERTIFIED MAIL SERVICE

TO __[*clerk*]__:

Make certified mail service upon __[*defendant*]__ at /the address stated in the caption of the summons. /__[*fill in address for service if different from caption of summons*]__./

Special instructions for server:_____

_____

_____

_____

/Clerk/Deputy Clerk/

RECEIPT OF SUMMONS BY
SERVING AUTHORITY

First Receipt

Received this summons on _____, 19___, at ___o'clock ___m.

_____
Officer

By _____
Title

Subsequent Receipt

Received this summons on _____, 19___, at ___o'clock ___.m.

_____
Officer

By _____
Title

RETURN OF SERVICE OF SUMMONS
(PERSONAL)

Fees	
Mileage	$_____
	_____
	_____
	_____
	_____
Total	$_____

I received this summons on _____, 19___, at ___o'clock ___.m., and made personal service of it upon __[*fill in name*]__ by locating /him/her/ and tendering a copy of the summons, a copy of the /complaint/indictment/information/ and accompanying documents on _____, 19___.

_____
Serving Officer, Title

Date return made: _____, 19___

RETURN OF SERVICE OF SUMMONS
(RESIDENCE)

Fees	
Mileage	$_____
	_____
	_____
	_____
	_____
Total	$_____

I received this summons on _____, 19___, at ___o'clock ___.m., and made residence service of it upon __[*fill in name*]__ by leaving, at /his/her/ usual place of residence with __[*fill in name*]__ a person of suitable age and discretion then residing therein, a copy of the summons, a copy of the /complaint/indictment/information/ and accompanying documents, on _____, 19___.

_____
Serving Officer, Title

Date return made: _____, 19___

RETURN OF SERVICE OF SUMMONS
(FAILURE OF SERVICE)

Fees	
Mileage	$_____
	_____
	_____
	_____
	_____
Total	$_____

I received this summons on _____, 19___, at ___o'clock ___.m., with instructions to make /personal service/residence service/ upon __[*fill in name*]__ and I was unable to serve a copy of the summons upon /him/her/ for the following reasons: _____

_____

_____

_____

_____

Serving Officer, Title

Date return made: _____, 19___

Form VII Warrant on complaint

(Crim R 4)

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio
/City of Columbus/
v.
__[*name*]__
__[*address*]__

NO. _____

WARRANT ON COMPLAINT
(Rule 4)

TO __[*officer authorized to execute a warrant*]__:

A complaint, a copy of which is attached hereto, has been filed in this court charging __[*describe the offense and state the numerical designation of the applicable statute or ordinance*]__.

You are ordered to arrest C.D. [*defendant*] and bring /him/her/ before this court without unnecessary delay.

You /may/may not/ issue summons in lieu of arrest under Rule 4(A)(2) or issue summons after arrest under Rule 4(F) because __[*state specific reason if issuance of summons restricted*]__.

Special instructions to executing officer: _____

_____

_____

_____
Judge/Officer designated by Judge(s)/
Clerk/Deputy Clerk/
Franklin County Municipal Court

SUMMONS ENDORSEMENT
See NOTE: Use only in appropriate case

This warrant was executed/by arrest and/by issuing the following summons:

TO C.D. [*defendant*]

You are hereby summoned and ordered to appear at __[*time, day, date, room*]__, Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio 43215.

If you fail to appear at the time and place stated above you may be arrested.

_____
Issuing Officer, Title
See Rule 4(A)(2), Rule 4(F) and Return Forms

NOTICE TO DEFENDANT: For information regarding your duty to appear call __[*fill in telephone number(s)*]__.

_____

RECEIPT OF WARRANT BY EXECUTING AUTHORITY

First Receipt

Received this warrant on _____, 19___, at ___o'clock ___.m.

_____
Officer

By _____
Title

Subsequent Receipt

Received this/alias/warrant on _____, 19___, at ___o'clock ___.m.

_____
Officer

By _____
Title

RETURN OF EXECUTED WARRANT

Fees
Mileage $_____
_____
_____
_____
_____
Total $_____

1. Execution by Arrest

I received this warrant on _____, 19___, at ___o'clock ___.m. On _____, 19___, I arrested C.D. and gave /him/her/ a copy of this warrant with complaint attached and brought /him/her/ to __[*state the place*]__.

_____
Arresting Officer, Title

Fees
Mileage $_____
_____
_____
_____
_____
Total $_____

2. Execution By Issuance Of Summons Under Rule 4(A)(2) By Executing Officer

I received this warrant on _____, 19___, at ___o'clock ___.m. On _____, 19___, I executed this warrant by issuing C.D. a summons by /personal service/residence service/ which ordered /him/her/ to appear at __[*time, day, date, room*]__, Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio 43215. The summons was endorsed upon the warrant and accompanied by a copy of the complaint.

_____
Issuing Officer, Title

Fees
Mileage $_____
_____
_____
_____
_____
Total $_____

3. Execution By Arrest And Issuance Of Summons Under Rule 4(F) By Arresting Officer

I received this warrant on _____, 19___, at ___o'clock ___.m. On _____, 19___, I arrested C.D. and after arrest I issued C.D. a summons by personal service which ordered /him/her/ to appear at _____, Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio 43215. The summons was endorsed upon the warrant and accompanied by a copy of the complaint.

_____
Arresting–Issuing Officer, Title

Fees
Mileage $_____
_____
_____
_____
_____
Total $_____

4. Execution By Arrest And Issuance Of Summons Under Rule 4(F) By Superior Of Arresting Officer

On _____, 19___, C.D. was arrested by __[*name of arresting officer*]__ and I issued C.D. a summons by personal service which ordered /him/her/ to appear at __[*time, day, date, room*]__, Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio 43215. The summons was endorsed upon the warrant and accompanied by a copy of the complaint.

_____
Issuing Officer, Title

RETURN OF UNEXECUTED WARRANT

Fees	
Mileage	$_____
	_____
	_____
	_____
	_____
Total	$_____

I received this warrant on _____, 19___, at ___o'clock ___.m. On _____, 19___, I attempted to execute this warrant but was unable to do so because __[*state specific reason or reasons and additional information regarding defendant's whereabouts*]__.

_____

Executing Officer, Title

FORM VIII

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

State of Ohio)
)
v.)
)
_____)
name)
)
_____)
address)

NO._____

CLERK'S MEMORANDUM OF DETERMINATION TO ISSUE SUMMONS UPON INDICTMENT

(Rule 9)

It appearing that defendant _____ was released pursuant to
name
Rule 46 by the _____ on the same offense for which / he/she
bind-over court
/ was indicted in this court, summons shall issue: / to an appropriate officer and such officer shall be directed to make / personal service / residence service /.

/ by certified mail service /

Service shall be at / the address stated in the caption of this notice / _____

_____
fill in address if different from caption

Special instructions for server: _____

_____

_____

_____
/ Clerk / Deputy Clerk /
Court of Common Pleas
Franklin County, Ohio

FORM IX

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

State of Ohio)
)
v.)
)
_____) PROSECUTING ATTORNEY'S
name) REQUEST FOR ISSUANCE OF
) SUMMONS UPON/INDICTMENT
_____) /INFORMATION/
address) (Rule 9)
)
)

NO._____

TO _____
/ Clerk / Deputy Clerk /

_____ has been named a defendant in an / indictment returned by the grand jury / information filed by the prosecuting attorney. / Issue summons to an appropriate officer and direct him to make / personal service / residence service / certified mail service / upon defendant at / the address stated in the caption of this request./_____
C.D.
defendant
fill in address if different from caption

Special instructions for server: _____

_____

_____

_____
Prosecuting Attorney, Title

FORM X

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

State of Ohio	)	
	)	NO._____
v.	)	
	)	PROSECUTING ATTORNEY'S
_____	)	REQUEST FOR ISSUANCE OF
name	)	WARRANT UPON
_____	)	/INDICTMENT/INFORMATION/
address	)	
	)	(Rule 9)

TO: _____
/ Clerk / Deputy Clerk /

_____ C.D. _____ has been named a defendant in an / indictment re-
defendant
turned by the grand jury / information filed by the prosecuting attorney./

Issue a warrant to an appropriate officer and direct him to execute it upon _____
_____ C.D. _____ / at the address stated in the caption of this request./
defendant

_____ ./
fill in address if different from caption

Special instructions for executing officer: _____

_____

_____

_____
Prosecuting Attorney, Title

Form XI Warrant upon indictment or information

(Crim R 9)

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

State of Ohio
v.
__[*name*]__
__[*address*]__

NO. _____
WARRANT UPON
/INDICTMENT/INFORMATION/
(Rule 9)

TO __[*officer authorized to execute a warrant*]__:

An /indictment/information/, a copy of which is attached hereto has been filed in the Franklin County Court of Common Pleas, 410 South High Street, Columbus, Ohio 43215, charging C.D. [*defendant*] with: __[*describe the offense and state the numerical designation of the applicable statute*]__.

You are ordered to arrest C.D. [*defendant*] and bring him before this court without unnecessary delay.

Special instructions to executing officer: _____

_____

_____

_____
/Judge/Clerk/Deputy Clerk/
Court of Common Pleas
Franklin County, Ohio

_____

RECEIPT OF WARRANT BY EXECUTING AUTHORITY

First Receipt

Received this warrant on _____, 19___, at ___o'clock ___.m.

_____
Officer

By _____
Title

Subsequent Receipt

Received this warrant on _____, 19___, at ___o'clock ___.m.

_____
Officer

By _____
Title

_____

RETURN OF EXECUTED WARRANT

Fees	
Mileage	$_____
	_____
	_____
	_____
	_____
Total	$_____

I received this warrant on _____, 19___, at ___o'clock ___.m. On _____, 19___, I arrested C.D. and gave /him/her/ a copy of this warrant with /indictment/information/ attached and brought /him/her/to __[*state the place*]__.

_____
Arresting Officer, Title

RETURN OF UNEXECUTED WARRANT

Fees	
Mileage	$_____
	_____
	_____
	_____
	_____
Total	$_____

I received this warrant on _____, 19___, at ___o'clock ___.m. On _____, 19___, I attempted to execute this warrant but was unable to do so because __[*state specific reason or reasons and additional information regarding defendant's whereabouts*]__.

_____

Executing Officer, Title

Form XII Summons in lieu of arrest without warrant, and complaint upon such summons

(Crim R 4(A)(3))

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio
/City of Columbus/
v.
__[*name of defendant*]__
__[*address*]__
__[*age*]__

SUMMONS NO. _____

CASE NO. _____
SUMMONS IN LIEU OF
ARREST WITHOUT WARRANT,
AND COMPLAINT UPON
SUCH SUMMONS
(Rule 4(A)(3))

TO DEFENDANT:

SUMMONS

In lieu of immediate arrest upon a misdemeanor you are summoned and ordered to appear /at __[*time, day, date, room*]__, Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio 43215./ before the Franklin County Juvenile Court, 50 East Mound Street, Columbus, Ohio 43215 at the time and place ordered by that court./ If you fail to appear at this time and place you may be arrested.

This summons served personally on the defendant on _____, 19___.

COMPLAINT

On _____, 19___, at __[*place*]__, you __[*describe the offense charged and state the numerical designation of the applicable statute or ordinance*]__.

_____
Signature of Issuing–Charging
Law Enforcement Officer

Being duly sworn the issuing-charging law enforcement officer states that he has read the above complaint and that it is true.

_____
Issuing–Charging Law Enforcement Officer

Sworn to and subscribed before me by _____
on _____, 19___.

_____
/Judge/Clerk/Deputy Clerk/
Franklin County Municipal Court

[*or*]

_____
Notary Public,
My Commission expires _____, 19___
/Franklin County/State of Ohio/

NOTICE TO DEFENDANT: The officer is not required to swear to the complaint upon your copy of the summons and complaint. He swears to the complaint on the copy he files with the court. You may obtain a copy of the sworn complaint before hearing time. You will be given a copy of the sworn complaint before or at the hearing. For information regarding your duty to appear call __[*fill in telephone number(s)*]__.

NOTICE TO DEFENDANT UNDER EIGHTEEN YEARS OF AGE: You must appear before the Franklin County Juvenile Court, 50 East Mound Street, Columbus, Ohio 43215, at the time and place determined by that Court. The Juvenile Court will notify you when and where to appear. This Summons and Complaint will be filed with the Juvenile Court. The Complaint may be used as a juvenile complaint. You may obtain a copy of the sworn complaint from the Juvenile Court before the Juvenile Court hearing. You will be given a copy of the sworn complaint before or at the Juvenile Court hearing. For information regarding your duty to appear at Juvenile Court call __[*fill in telephone number(s)*]__.

Form XIII Summons after arrest without warrant, and complaint upon such summons

(Crim R 4(F))

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio
/City of Columbus/
v.
__[*name of defendant*]__
__[*address*]__
__[*age*]__

SUMMONS NO. _____

CASE NO. _____

SUMMONS AFTER ARREST WITHOUT WARRANT, AND COMPLAINT UPON SUCH SUMMONS
(Rule 4(F))

TO DEFENDANT:

SUMMONS

In lieu of continued custody upon a misdemeanor you are summoned and ordered to appear /at __[*time, day, date, room*]__, Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio 43215./ before the Franklin County Juvenile Court, 50 East Mound Street, Columbus, Ohio 43215 at the time and place ordered by that court./ If you fail to appear at this time and place you may be rearrested.

This summons served personally on the defendant on _____, 19___.

COMPLAINT

On _____, 19___, at __[*place*]__, you __[*describe the offense charged and state the numerical designation of the applicable statute or ordinance*]__.

_____
Signature of Issuing–Charging
Law Enforcement Officer

Being duly sworn the issuing-charging law enforcement officer states that he has read the above complaint and that it is true.

_____
Issuing–Charging Law
Enforcement Officer

Sworn to and subscribed before me by _____
on _____, 19___.

_____
/Judge/Clerk/Deputy Clerk/
Franklin County Municipal Court
[*or*]

_____
Notary Public,
My Commission expires _____, 19___
/Franklin County/State of Ohio/

NOTICE TO DEFENDANT: The officer is not required to swear to the complaint upon your copy of the summons and complaint. He swears to the complaint on the copy he files with the court. You may obtain a copy of the sworn complaint before hearing time. You will be given a copy of the sworn complaint before or at the hearing. For information regarding your duty to appear call __[*fill in telephone number(s)*]__.

NOTICE TO DEFENDANT UNDER EIGHTEEN YEARS OF AGE: You must appear before the Franklin County Juvenile Court, 50 East Mound Street, Columbus, Ohio 43215, at the time and place determined by that Court. The Juvenile Court will notify you when and where to appear. This Summons and Complaint will be filed with the Juvenile Court. The Complaint may be used as a juvenile complaint. You may obtain a copy of the sworn complaint from the Juvenile Court before the Juvenile Court hearing. You will be given a copy of the sworn complaint before or at the Juvenile Court hearing. For information regarding your duty to appear at Juvenile Court call __[*fill in telephone number(s)*]__.

Form XIV Minor misdemeanor citation

(Crim R 4.1)

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio
/City of Columbus/
v.
__[*name of defendant*]__
__[*address*]__
__[*age*]__

Citation No. _____

Case No. _____

MINOR MISDEMEANOR
CITATION
(Rule 4.1)

TO DEFENDANT:

On __[*date*]__, 19___, at __[*place*]__.

You __[*describe the offense charged and state the numerical designation of the applicable statute or ordinance*]__.

You are ordered to appear at __[*time, day, date, room*]__, Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio 43215./before the Franklin County Juvenile Court, 50 East Mound Street, Columbus, Ohio 43215, at the time and place ordered by that court./

If you wish to contest this matter you must appear at the above time and place. In lieu of appearing at the above time and place you may, within the time stated above, appear personally at 120 West Gay Street, Columbus, Ohio 43215, Room 120, sign the guilty plea and waiver of trial which appear in this form, and pay a fine of $_____ and court costs of $_____.

If you fail to appear at the time and place stated above you may be arrested.

This citation was served personally on the defendant.

_____
Signature of Issuing Law
Enforcement Officer

Being duly sworn the issuing law enforcement officer states that he has read the citation and that it is true.

_____
Issuing Officer

Sworn to and subscribed before me by _____ on _____, 19___.

_____
/Judge/Clerk/Deputy Clerk/

[*or*]

_____
Notary Public,
My Commission expires _____, 19___
/Franklin County/State of Ohio/

NOTICE TO DEFENDANT: The officer is not required to swear to your copy of the citation and complaint. He swears to the citation in the copy he files with the court. You may obtain a copy of the sworn citation before hearing time. You will be given a copy of the sworn citation before or at the hearing. For information regarding your duty to appear call __[*fill in telephone number(s)*]__.

NOTICE TO DEFENDANT UNDER EIGHTEEN YEARS OF AGE: The appearance, guilty plea, waiver and payment provisions of this form do not apply to you. You must appear before the Franklin County Juvenile Court, 50 East Mound Street, Columbus, Ohio 43215, at the time and place determined by that Court. The Juvenile Court will notify you when and where to appear. This citation will be filed with the Juvenile Court. The citation may be used as a juvenile complaint. You may obtain a copy of the sworn citation from the Juvenile Court before the Juvenile Court hearing. You will be given a copy of the sworn citation before or at the Juvenile Court hearing. For information regarding your duty to appear at Juvenile Court call __[*fill in telephone number(s)*]__.

GUILTY PLEA WAIVER OF TRIAL, PAYMENT OF FINE AND COSTS

I, the undersigned defendant, do hereby enter my written plea of guilty to the offense charged in this citation. I realize that by signing this guilty plea I admit my guilt of the offense charged and waive my right to contest the offense in a trial before the court. I plead guilty to the offense charged in the citation.

FINE _____
COST _____
TOTAL _____

RECEIPT NO. _____

_____
Signature of Defendant

_____
Address

_____
Signature And Title Of Person Taking Guilty Plea, Waiver And Payment

Form XV Uniform Petition Form

(Crim R 35)

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

CASE NOS.: _____
_____
JUDGE: _____

STATE OF OHIO
Plaintiff–Respondent
-vs-
_____
Defendant–Petitioner

POST–CONVICTION PETITION

I. CASE HISTORY

TRIAL:

Charge (include specifications)	Disposition
_____	_____
_____	_____

Date Sentenced: _____
Name of Attorney: _____

Was this conviction the result of a (circle one): **Guilty Plea No Contest Plea Trial**

If the conviction resulted in a trial, what was the length of the trial? _____

Appeal to Court of Appeals
Number or citation _____
Disposition _____
Name of Attorney _____

Appeal to Supreme Court of Ohio
Number or citation _____
Disposition _____
Name of Attorney _____

HAS A POST–CONVICTION PETITION BEEN FILED BEFORE IN THIS CASE?

YES NO

If YES, attach a copy of the Petition and the Judgment Entry showing how it was disposed.

IF THIS IS NOT THE FIRST POST–CONVICTION PETITION, OR IT IS FILED OUTSIDE THE TIME LIMITS PROVIDED BY LAW, STATE THE REASONS WHY THE COURT SHOULD CONSIDER THIS PETITION: _____
_____
_____
_____
_____

OTHER RELEVANT CASE HISTORY: _____
_____

II. STATEMENT OF FACTS

III. GROUNDS FOR RELIEF
(each ground not to exceed three pages)

Ground for relief 1: _____

_____

_____

_____

_____

Attached exhibit numbers which support ground for relief:

_____

_____

Legal authority (constitutional provisions, statutes, cases, rules, etc.) in support of ground for relief: _____

_____

_____

_____

(name)